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STATE IMPLEMENTATION OF FEDERAL STANDARDS

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

PART 2

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OCTOBER 15, 1981

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STATE IMPLEMENTATION OF FEDERAL STANDARDS

THURSDAY, OCTOBER 15, 1981

U.S. SENATE,
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 357, Russell Senate Office Building, Hon. Dave Durenberger (chairman of the subcommittee) presiding.

Present: Senator Durenberger.

OPENING STATEMENT OF SENATOR DURENBERGER

Senator DURENBERGER. The hearing will come to order.

This morning we continue with the second of a series of hearings on what we have labeled "State Implementation" or "Intergovernmental Regulation." Simply put, these labels apply to programs where a Federal agency sets certain national standards, as mandated by law, and looks to the States to enforce them. The common feature of the programs is that States are given the option of developing implementation plans and assuming enforcement responsibility. If they choose not to participate, or if their plans and enforcement strategies do not meet Federal standards, the Federal agency takes over.

The intent of these programs—the Clean Air Act, the Occupational Safety and Health Act, the Surface Mining Act and others—is to regulate the private sector. It envisions a partnership between Federal administrators and State leaders, including Governors, State legislators, and State administrators. Officials at both levels cooperate in regulating the private sector. Unfortunately, the partnership has soured in many cases. Washington has been reluctant to give up the power. Certain private sector economic institutions have pushed for national rather than State-by-State implementation. The Federal-State alliance has taken a back seat to Federal oversight to make sure the State regulators are doing their jobs according to Federal dictate. Emphasis on achieving program goals has given way to overemphasis on complex regulatory processes.

It is time to examine these programs and make the reforms so they will run smoothly. This examination is consistent with the President's program of "New Federalism." So far, New Federalism has emphasized consolidation of categorical programs into blocks. However, as we shall see today, the concept is being extended to include regulatory federalism as well.

The first hearing of this subcommittee on State Implementation brought attention to the role of the States in developing implementation plans under the Clean Air Act. We learned that, although the act provides for State design of strategies for cleaning up the air within parameters prescribed by Federal law and regulation, in reality, State decisions can be overriden by the Environmental Protection Agency without discussion with the States and without prior notice. Often simply by inaction. Such a system is hardly a cooperative partnership.

In this second hearing, the subcommittee will take a look at enforcement responsibilities under the Occupational Safety and Health Act. It is timely to take a look at OSHA for a couple of reasons: First, if a popularity poll of Federal laws were taken among the State officials and the business people of this country, OSHA would be judged the least popular. There would be little competition for this designation. Some of the criticism is justified. Clearly, some change must be made or the program should be discontinued.

Second, in keeping with the President's New Federalism goals, Thorne Auchter, Assistant Secretary of Labor for Occupational Safety and Health, has vowed to overhaul the administration of OSHA. He wants to encourage more States to assume enforcement responsibility. He wants to encourage business-labor consultation and change the oppressive Federal presence in this program.

Today, the subcommittee will examine that new policy from an intergovernmental perspective. Basic questions will be addressed, such as:

When the responsibilities are decentralized, what balance in Federal and State authority should be sought to insure that the objectives of the law will be met?

What incentives will be necessary to obtain greater participation by the States?

What barriers now discourage State enforcement, and what is the plan for lifting them?

Can we expect a more effective OSHA if additional flexibility for standard setting and enforcement are given to the States?

What difference will decentralization make to the groups most affected, that is, business and labor?

What financial impediments exists, or are incentives necessary?

Today we have a full slate of witnesses to discuss these questions. They are Thorne Auchter, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor; Bruce Swanson, commissioner for labor and industry, State of Minnesota and vice president, Occupational Safety and Health State Plan Association; Lowell Jackson, secretary of industry, labor and human relations, State of Wisconsin; Dr. Richard Boggs, director, Occupational Safety and Health, Organization Resources Counselors; William MacKenzie, director, Corporate Safety, 3M Corp.; and Jim Lapping, director of safety, building and construction trades, AFL-CIO.

Our first witness is Thorne Auchter.

Mr. Auchter, you have assumed one of the most unpopular positions in the Federal Government and I commend you on your willingness to step in and try to reform OSHA.

I understand you have scheduled a series of meetings this week with your regional administrators to focus on Federal-State relations. I appreciate very much your willingness to take time out from those meetings to be with us today.

Do you have a prepared statement? We are ready for your testimony.

TESTIMONY OF THORNE G. AUCHTER, ASSISTANT SECRETARY FOR OCCUPATIONAL SAFETY AND HEALTH, DEPARTMENT OF LABOR

Mr. AUCHTER. Thank you, Mr. Chairman. Let me say, first, that it is a pleasure for me to be here to discuss our approach at the Occupational Safety and Health Administration with regard to the Federal-State relationship. I do have a prepared statement which I would like to submit for the record at this time. I will briefly summarized it.

When I first came to this agency, the first thing I looked at was the responsibilities delegated to us by Congress under our law. When I did that, I realized that Congress envisioned that we would use about six or seven basic tools to achieve our goal, the reduction and elimination of hazards in the workplace. Among those tools are the promulgation and review of standards, enforcement, consultation, education and training, our responsibility in Federal agency programs, and the need to foster and create special projects and State programs.

Then I looked at the past history of the agency. I realized that in the 10 years of the agency's existence, previous administrations had emphasized one part of our program mix over other parts—for the first 4 or 5 years, primarily enforcement; then for the last 4 or 5 years, primarily the promulgation of health standards. I don't believe the law was created for the agency to act in that manner. I believe what Congress had in mind was for us to use equally each one of those tools where it will work. With that in mind we have implemented a management system that allows us, for the first time, to do that based on what we call our indicator series; that is, subjects to be measured by our field operations on a regular basis. For the first time the agency will be able to measure the achievements that it makes on a regular basis in striving toward its goals. We are using those indicators to measure our program in reaching our objectives for the agency for 1982.

We have about 16 objectives for the agency that fall into each of our program areas. We have some things that we are striving to do in standard setting, in compliance, and in State programs—things that we want to accomplish. We have translated those objectives into performance criteria for our senior and middle managers at the agency. So, once again for the first time, the management system allows us to see how far the agency has come in the fiscal year in achieving its goals. It also allows us to grade our managers and base their performance ratings on how far they have come in achieving their individual criteria for that particular fiscal year.

With regard to State programs, we have focused on three major areas that we would like to address during fiscal year 1982. Those three areas have been of great concern over the years to those involved with OSHA, especially the State designees—the benchmark decision, the way we monitor program States and the question of multi-State standards.

With those aspects in mind, Mr. Chairman, we have met twice on a formal basis with all of our 24 State designees to talk both generally and specifically about those questions. We are in the process of revising our benchmark formula. We have sent that revision out to the States for comment. We are pursuing this as actively as we can to see if we can bring it to some resolution.

The problem is that as a result of the benchmark problem, no State has ever been given what we call 18(e) or final approval "18(e) determination." We think that is contrary to the intent of Congress. I think Congress told us that when States meet certain criteria, they should be full and equal partners with OSHA. So we are trying to pursue that. We are taking a look at the way we monitor the States, and to see if we can resolve the question of multi-State standards.

With that brief remark, I have concluded and would be glad to respond to any questions you may have, Mr. Chairman.

Senator **Durenberger.** Thank you very much. Your full statement will be made part of the record. Let me start off by asking you about the whole benchmark problem and how you intend to address that.

I said something in my opening statement about an intent of the Federal-State partnership. I really can't find anything in the court decision which makes a great deal of sense to me when I put on my State hat and try to understand the quality of the partnership. I have been given the impression that your office has revised the benchmark formula and has sent it out for comment. Is that a fact?

Mr. **Auchter.** Yes, sir. That is correct.

Senator **Durenberger.** What other steps are being taken? Would you just explain for me the process that you have to go through in revising the formula?

Mr. **Auchter.** Mr. Chairman, the court said that as far as staffing goes, States must have a "fully effective" program before they can have final approval. The court came back to the agency and said, "OK, now it is time for you to come up with what, in your opinion, would be fully effective staffing." Currently we believe that the numbers that were established by the previous administrations in response to the court order are inordinately high. In fact, no State would achieve those numbers of health and safety staff as required, especially given the fiscal realities of the age.

In fact, Federal OSHA could not meet those standards if we were to take back the jurisdiction in those States and territories. So we have revised the formula based on the fiscal realities of the 1980's, based on a high-hazard targeting approach. We have further based it on the Federal experience in order to more equally balance, if you will, the relationship between Federal OSHA and the State program operations.

In addition to that, as I said, we have asked for comments from the designees to see how the proposed formula, or a particular set of numbers, would individually affect those States. Once we get that information back we will notify the public in the Federal Register and ask for their comments on those sets of numbers and the way they were put together. Then at the appropriate time, provided that this has met with approval by the court, we would go back to the individual States on the question of final determination. We will then be in a posture to deal with them one by one.

Senator **Durenberger.** But you are still dealing with the definition of "fully effective" as being measured in terms of the number of inspectors—someone stands and counts them as they go through the door—or some other sort of a statistical measure which looks at the process from the standpoint of inspection, if you will, rather than from the standpoint of your program results.

Mr. **Auchter.** Yes, sir. That is true.

Senator **Durenberger.** This leads me to the problem which you and others will refer to of financing—if we were to cut back any further in financing—for either the Federal inspections or the 50-percent portion of the State inspection—or if we saw the States coming in at 50 percent, and we wanted them to get in more of the financing. So, we tried to crank them up and found we didn't have enough money to do that. Really, benchmarking the program's effectiveness in terms of the amount of money which is spent on it doesn't seem to me to make a great deal of sense.

Mr. **Auchter.** We are addressing, I think, two separate problems. One is the question of staffing with regard to final approval. We can be involved with the States; in fact we are, on a regular basis, short of final approval relative to that court order. We can enter into a certification agreement with the States, which we have done. This means that they have a paper system in place. They have all the necessary components in place; however, it doesn't speak to effective operations—to the way a particular program operates. Furthermore, a State must be certified for at least 1 year before we can address the question of final approval.

Another way that we will probably address the question of benchmarks is to go back to the court and ask them if we can grant final approval before the benchmark numbers are met. This would remove that impediment to final approval; but that would still require movement on the part of the States, based on their budgetary priorities—some movement toward approximating the benchmark staffing numbers, whatever they may be. We are trying not to get involved in the conflict between resource allocation on the budget side and staffing levels on the other side. It is certainly a difficult line to walk.

Senator **Durenberger.** The law currently permits your office to support up to 50 percent of the operating cost of a State OSHA program. Am I correct in assuming that that is probably one of the major incentives for State participation in this Federal regulatory program?

Mr. **Auchter.** Yes, sir, I would certainly think so.

Senator **Durenberger.** Have you requested additional matching funds for the current year, or the coming year?

Mr. **Auchter.** Yes, we have, Senator. Of course our budget request anticipated some $3 or $4 million increase in our grants operation to the States based on inflationary requirements. However, we are in the process of revising our budget request. We are currently dealing with the Senate and the House staff to, in fact, reduce our overall budget request by some 12 percent.

Senator **Durenberger.** But you are, from what I have seen and read, trying to use your resources—the Federal resources—better than they have been used in the past.

Mr. **Auchter.** Yes, sir, we are.

Senator **Durenberger.** To avoid the Federal monitoring, you are speeding up the process of certification—I may not be using the right word—by making the decision that certain States can go it on their own. You are pulling the overlapping Federal inspection out and using those people in the Federal jurisdiction States. Is that correct?

Mr. **Auchter.** Yes, that is true. We have eliminated dual enforcement in States. We have pulled those people out and reduced the number of Federal monitors. We are going to do an objective paper-review as the principal component of our monitoring system. We are working that system out with the designees.

Senator **Durenberger.** You can get only a certain amount of economies out of eliminating that kind of an overlap. At some point, with the overall budget restrictions on the Federal side, there is only so much Federal inspection that you can accomplish. Then you look over on the other side. How much can you get from the States by encouraging them through Federal funding? I suspect we will hear that, even with 50 percent, it is not enough of an encouragement for the States to buy into all of the Federal mandates and all that sort of thing.

Where do you see us headed? Are there some incentives for States to get into the program, other than this 50 percent match, as we now head into a period of time when everyone is short of money?

Mr. **Auchter.** Mr. Chairman, I believe that our job in OSHA at this time is to do the best job we can with the 24 existing State and territorial programs that we have.[1] I do not anticipate the capability to bring in new States until we get the budget balanced. But that still gives us plenty of work to do. We have problems we need to address, such as the way we monitor, the benchmark decision. We need to be sure that we resolve those questions.

We are working closely with the States to bring them all up to the same level of competency.

Incidentally, generally speaking, the States provide better coverage than the Federal OSHA does anyway. They provide more personnel, more inspectors, and more individuals, if you will, per group of employees. The State plan effort is a good program for the Federal OSHA to be involved in, provided we lend assistance where we see weaknesses in a particular program. Rather than go in and fight the State, we should go in and assist them in bringing their program up to an appropriate level of competency. That is the approach we are trying to take. I think it is one that is going to work.

Senator **Durenberger.** Let's say, and I hope this doesn't happen, but let's say we budget cut ourselves right out of business, in effect. You can't do a good job from the Federal side. The States are pulling out because they can't either. In other words, it strikes me that this program has become, in the eyes of the State administrators, much like your categorical grant programs. The Federal Government has a laudable purpose to achieve which is already being achieved in some States but not in others. So, it hangs a carrot of some money out there in order to get all the States to come. They come in for the 50 percent of the money. They take a whole handful of mandates, and all that sort of thing, as to how to run their program. They take the burden of paperwork. They try it, for a while, and then find out it isn't worth the Federal money. So, they pull out of the system.

I can see the same thing that is happening to OSHA starting to happen in some of these categorical grant program areas. I have a deep concern for where the Nation is left in its future in the area of occupational safety and health.

If I were to be very logical about this, I would say that the person who runs the workplace has the greatest stake in providing for safety and health. Those who have good safety programs and those who realize that work rates and so forth reflected in the safety of the workplace are probably going to do a lot of things on their own. Certain States, like my own State, started an OSHA program before there ever was a Federal program.

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[1] See p. 26 for "Status of State Occupational Safety and Health Plans" map.

Wisconsin—we will hear from them today—as you know, was doing a great job until the Federal OSHA came along and showed them how not to do it. They bailed out on it. My concern is for our role—here at the Federal level—in making sure that the Nation, as a whole, achieves the kinds of standards that Minnesota or Wisconsin has.

I am wondering, besides just shifting your resources, where do you go? You don't see us just abandoning a Federal involvement in occupational safety and health, do you?

Mr. AUCHTER. No, sir. I do not.

Senator DURENBERGER. We have this effort as a partnership which doesn't seem to be working out too well because of financial conditions or whatever. Is there a preferred role for the Federal Government in what basically has been a traditional State responsibility?

Mr. AUCHTER. Mr. Chairman, I believe that the existing legislation that we have gives us the tools we need to deal with our Federal responsibility in safety and health. Yet, in addition to that, we need to provide the State governments with the incentive to be involved in safety and health; and further, to carry out the President's New Federalism approach where we return authority and responsibility back to the States where we can.

I do believe that the government which is closest to the people is the best; and that if government is going to be involved in safety and health, it should be as close as possible to the individuals it serves.

I think that for 10 years the Federal OSHA has been unduly burdensome in its relations with State programs. I think the monitoring systems that have been used with the States have been subjective in nature; they have been heavyhanded from a Federal personnel standpoint. Traditionally we have monitored by sending Federal monitors out into the workplace with the State personnel, looking over their shoulders, and duplicating their paperwork. I think it has been a tremendous waste of resources. We are working to change that, and I think we can.

When we do, the primary responsibility still remains for Federal OSHA to make 18(e) determinations. Now we issue certifications. When we issue final approvals, Federal OSHA, under the responsibility Congress gave us, will be saying that a State program is at least as effective as the Federal program and that it continues to be so. We always have the responsibility to monitor. Monitoring can be an effective tool to point out weaknesses in a program, and then suggest ways of correcting those weaknesses.

What we are always trying to do is to provide the additional resources, if you will, for the reduction and elimination of hazards in the workplace to protect the employees. That is what the safety and health business is and has always been about. State programs are an effective way to accomplish that objective.

Without a central location, if you will, a central funnel through which safety and health information flows on a national basis, I think it would be very difficult for them to do. I don't see a time when it would make sense to return all the responsibility back to the States in toto. By the same token, I don't think the Federal OSHA should make decisions with its head in the clouds, without consulting with the States on a regular basis.

Senator **Durenberger.** I would like to make sure that you and I are, at least, clear on this subject. Do you agree with me that, when the Federal OSHA legislation was enacted, it was simply a sensible declaration of national policy to protect the workers of America from unsafe and unhealthy conditions in the workplace? Is that policy still just as good today as it was when it was enacted 10 years ago?

Mr. **Auchter.** Yes, sir, it is.

Senator **Durenberger.** How do you deliver on that guarantee to the workers of America? The evidence seems to be—and there is, at least, some evidence of the fact—that an effort at a partnership between the Federal Government and the States, which has not worked out well as a partnership, has been deleterious to workplace safety. Is that not true?

Mr. **Auchter.** I would say that would be true; yes, sir.

Senator **Durenberger.** That is substantially affected by the interplay of bureaucracy. That is also substantially affected by the lack of adequate resources used in the right way, the lack of flexibility, ingenuity, innovation, and things like that which come when you just say to a State—as you know—"Do it the best way you know how." That probably has come because there are strong interests in the economy of America—multi-State interests, unions, and employers who would prefer to see one standard all over the place or one place to put pressure for change.

I am not stating opinion. I am basically stating historical facts over the 10 years. Is that not correct?

Mr. **Auchter.** You are correct; yes, sir.

Senator **Durenberger.** I take it that what we we are trying to find is a way to increase safety by introducing as much subjective judgment—the ability to be innovative under the circumstances—as possible and still make the worker, when he or she takes on a job, feel that his or her interests are being adequately protected. We are trying to find what combination of Federal, State, and private sector roles will do that.

Mr. **Auchter.** Yes, sir.

Senator **Durenberger.** With that in mind, my recollection of your testimony is that you are looking at—you mentioned the three points here—the monitoring role. I don't know whether you used the word "self-monitoring," but there is a notion that, in a good workplace, we ought to be able to find some form of self-policing—self-auditing—on which we can rely.

Would you describe for us some of the data collection problems which might be involved, some of the things you are working on so that you can develop a way in which you don't have to send human beings running up and down aisles all day long, but can accomplish greater safety and health by some other process?

Mr. **Auchter.** Mr. Chairman, we have met with our designees, as I mentioned to you on a couple of occasions. We put together, in conjunction with the designees, five work groups to address the question of effectiveness criteria, for a new monitoring system. The work groups were comprised of State personnel, Federal personnel, national office personnel, and regional people from our offices who met for a couple of days here in Washington to draw up proposals. The basic objective is to come up with a paper review system.

Also, in conjunction with that, the new monitoring system would tie all the States in with the Federal OSHA to the same data collection system, using the same forms—which we called our Management Information System, or MIS. The idea was that, hopefully, within about a 3-year period we would all be tied into the same data collection system and the same data analysis system. In this way we would be able to share information on safety and health issues on a regular basis simply by the use of computer terminals tied into the same granddaddy computer. We think that is a good approach because it actually will result in cost saving for the Federal OSHA. Some of the States will require more dollars to change their data collection systems. However, they always have the availability of additional funding through the grant applications that they make on an annual basis. So, that can be addressed in this way.

We always have to have data upon which to base decisions. We also need to have data in our representations to you in the Congress, when we come to discuss the various elements of our program in order to assure you that we are doing the job you told us to do. So we need that data.

Some of the program elements we would be addressing in establishing a uniform data system among the States would be the degree of penetration into the workplace, the sorts of inspections made—inspections made versus the targeted, program inspections—the question of consultation, what type of services are being provided, and so forth.

Once we get a general approach to effectiveness criteria from our work groups, we will send each part of that proposal back to the individual State designees for comment. We are trying to work as closely as we possibly can with them.

Senator DURENBERGER. Let me ask you about standard setting. The act makes it clear that the States have authority in regulating areas where there are no Federal standards. Several States have adopted standards regarding the labeling of hazardous substances in the workplace. For example, the California office of OSHA has standards for the chemical EDB. Neither Federal OSHA or any other State has developed such a standard.

In addition, six States have developed rules for hazardous substances in the workplace, while the Federal OSHA has not developed such a rule. These differences of standards from one State to another could be somewhat burdensome to the national corporation.

What do you see as OSHA's role in such situations? Could, or should, OSHA encourage States to wait until the Federal Government has developed a standard in order to promote uniformity; or should States go ahead, as some States have, in some of these areas?

Mr. AUCHTER. Mr. Chairman, let me first say that State programs are a complicated part of our program mix as they always have been and will continue to be so. That is why it is imperative that we deal closely and regularly with the individuals in the States who have responsibility for the safety and health program.

With regard to multi-State standards, as we refer to it, it is certainly a difficult question. We don't like to get ourselves in the posture of having a Federal OSHA standard on a subject and six or seven different State standards on the same subject. I do think that can be unduly burdensome to multi-State employers. I think that it would put them in a difficult position. However, the Occupational Safety and Health Act really does not speak to that. It doesn't give us much leeway there. We communicate with the States; we suggest; we confer, and so forth, on standards. However, as long as a standard is at least as effective as the Federal standard, they have the authority to proceed. I was aware of the emergency temporary standard for EDB in California early on. My only authority in that was to say, "Yes, California, you have the authority to proceed," which they do. They can have standards more stringent than ours.

Let me further say that this particular instance is an example of how we work with the States. There are four States involved with that substance. We have been in close communication with them. As a result of those communications, I have a special task force of industrial hygienists in the workplaces of those States where that particular substance is being used. We are collecting data; the Federal OSHA will make a decision on what to do with regard to that particular substance. However, it is not a formal process; it is an informal process.

With that in mind, I sent out a letter this week to our designees, asking their opinion of whether or not we should form a formal advisory committee from their ranks. We have already three formal advisory committees in OSHA. I asked them: "Should we have a fourth? Would it be a good conduit to plug into our program on a regular basis?" I am waiting for their comments. I have asked them to respond by November 1.

Senator DURENBERGER. One of the reactions which you may get is that, when you go from informality to formality, you may have to deal with the Federal Advisory Committee Act, or the Federal Administrative Procedures Act, or a variety of similar things which we have tied around people's hands. Do you know yet whether State participation is being constrained in some way by the Administrative Procedures Act or by the Federal Advisory Committee Act? Do either of these acts make it more difficult to get State participation?

Mr. AUCHTER. No; I don't know right now. I am waiting for those comments. Someone asked me that question for the first time this week, when we were talking about the advisory committee approach. I really don't have an answer for you yet. I will be glad to report back to you when I get a better sense of what the designees' opinions are.

Senator DURENBERGER. Let me ask you one last question which deals again with how best to achieve our objective. It seems to me that the OSHA program, or the objectives of the Occupational Safety and Health Act, has one thing going for it which a lot of other laws—like the Clean Air Act which we were into a few weeks ago—do not have. That is, if you adopt a philosophy that our role, at the national level, ought not be to tell people exactly how to get to these results, but we ought to care a whole heck of a lot about the ultimate result in this area. We have some relatively straight-forward measurements in terms of the workplace—the incidence of injuries or death or whatever in the workplace. We also have, where you have employee organizations—unions—you have in effect a complaint process. You have a reactive process. You also have the very interested employer association. You have national and State associations.

It seems to me that a lot of things are out here already without law to tell you whether or not you are doing a good job and yet have workers' compensation as a measurement. We also have or seem to have the problem that, when we look at these things from the Federal perspective, we seem to measure effectiveness in terms of the number of people whom we have in the various GS classifications walking into how many workplaces.

Clearly, one of the standards of measurement which everyone would like to use is, as you know, the incidence of injury or death. It would seem to me that any person who operates a workplace or works in a workplace would like to be rewarded for their safety and health prevention measures as well as for the prevention of cost-generating activities, as well as having people buy their product. However, they are presently in a system where there are really no particular rewards from the government side of the system for the employer and the employee who takes time and commits resources to job safety programs and holding down the incidence of injury.

Do you have any thoughts or suggestions on the problems we would face at the national level by tying in some of these rewards into this system? That clearly gets us into workers' comp which is a traditional State prerogative. Are there things which we should be looking at that would provide financial incentives to the States and to the employers which we aren't looking at now when we look at this just in terms of the inspection problem?

Mr. Auchter. Mr. Chairman, we think there are a lot of things that we should be looking at for the future. First, let me say there are about six or seven places in the act that call for the agency to be a catalyst for new, innovative, and creative programs in safety and health. One such program in which we are participating is in California. They have a labor-management committee with a self-inspection program at a particular worksite. As a result, that worksite has been dropped out of the California OSHA's inspection-targeting system. In place of that, they are monitored with a paper-review operation which has been in effect for about 2½ years now, I guess. It has proven to be very effective. I was in New York a couple of weeks ago with a representative from the insurance industry who said that he had an idea for a project based on some form of rebate involving workers' comp, reduced rates or something. We had only a very brief conversation. He said he wanted to talk to me further about it. I told him to give me a call. I am waiting to set up that meeting.

There has been some discussion about some sort of tax credit for abatement. I think that would probably require legislative action. There are a lot of things that the agency should be looking at with regard to how we can reward employers for good safety and health programs.

Last, let me say that we have changed our targeting system for manufacturing, for safety inspections only in manufacturing, to try and reflect just that sort of approach. When we go into a worksite in manufacturing, we will first do a paper review. If the records indicate that that particular worksite has experienced a low workday injury rate below the national average for manufacturing, the inspection would be terminated at that point. Yet, if the firm's records showed injury rates above the average, then the inspection would be conducted. We think that is a better way to use our resources because Congress told the agency to reduce injuries and deaths in the workplace—reduce. That means we need to direct our resources—and the same thing is true for State programs—we need to direct the resources where they can have the most positive effect, most rapidly for the most people.

We need to be results oriented. We don't need to be procedures oriented. We need to be results oriented in every part of our program mix. That is one of the reasons we have terminated the request for withdrawal action in the Virginia program.

Virginia has a different court system for handling contested cases. We were hung up on that for some period of time. Yet once we analyzed the data, their data reflected the same experience as ours; the same number of cases was upheld, overturned, and so forth; all the results fell within the general Federal experience and other State plan experiences as well. So, I decided we didn't need to be involved with how they move their paper; that sort of thing is their business. Results are what we are concerned with. That is the approach we are taking with our management-systems approach—results oriented. Take a look at the data, see what it tells us, and then make decisions based on that. We can do the same thing with the State programs. It should have been done a long time ago.

Senator **Durenberger.** Thank you very much for taking the time to be here today and for your testimony. We appreciate it.

[The prepared statement of Mr. Auchter, with attachment, follows:]

STATEMENT OF THORNE G. AUCHTER
ASSISTANT SECRETARY OF LABOR
FOR OCCUPATIONAL SAFETY AND HEALTH
BEFORE THE
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS
OF THE
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

October 15, 1981

Mr. Chairman, Members of the Subcommittee:

It is a pleasure to be here today to discuss the role of the States in implementing the Occupational Safety and Health Act of 1970 (the Act). "State Plans", as they are known in our agency, are State-operated programs for the administration and enforcement of job safety and health stadards. Efforts by the States are an integral part of the national safety and health program.

Legislative History:

The legislative history of the Occupational Safety and Health Act of 1970 makes clear that Congress intended the States to play a significant role in achieving the Act's objectives. The Senate Committee Report on the bill declares that--

> [e]ncouragement is given to Federal-State cooperation, and financial assistance is

> authorized to enable states, under approved plans, to take over entirely and administer their own programs for achieving safe and healthful jobsites for the Nation's workers.

The Act, itself, states that one of the means of achieving its purposes and policy is--

> by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws . . .

Twenty-three State Plans to Date:

Early in its existence, the Occupational Safety and Health Administration (OSHA) made a concerted effort to encourage the development of State programs. Of the fifty-six States and jurisdictions included under the Act, fifty have at some time submitted a plan for review. Thirty-one of these took the steps needed to meet OSHA's requirements for initial approval of a plan. At present, however, only twenty-three States and jurisdictions conduct comprehensive job safety and health programs, while a twenty-fourth--Connecticut--has retained a partial plan covering only State and local government employees, and a twenty-fifth--New York--is developing a partial plan similar to Connecticut's.

There are a variety of reasons why thirty-three States and jurisdictions have chosen not to administer their own job safety and health programs. For example, the Act permits the Federal government to fund no more than 50 percent of State's costs of operating a program. Many States today face serious budget constraints which make it even more difficult for them to consider initiation of a new program, for which they must provide at least 50 percent of the funding--especially a program which will otherwise be carried out by the Federal government. For others, the fear exists that the Federal share may be lowered once a State program is fully established.

Moreover, at the time of the Act's passage, some States had only minimal programs on which to build. And finally, political considerations may have figured in the inclination of some States to disassociate themselves from the sometimes unpopular enforcement procedures mandated by the Occupational Safety and Health Act of 1970. In other States, the oppostion of organized labor to the concept of State programs may have influenced the decision to leave responsibility for occupational safety and health with the Federal government.

Nonetheless, twenty-three States have found compelling reasons to operate their own programs.

Progress of State Plans:

To assume this responsibility, they first had to submit developmental Plans for OSHA's initial approval. Thereafter, to gain final approval of their programs, they had to continue to develop and implement their Plans--a process which, theoretically, could have been completed within three years of initial approval. None of the Plans now in existence, however, has yet received final approval, though most of them won initial approval over eight years ago.

Before describing the principal obstacle to final approval--so-called "benchmark" staffing levels developed by the previous administration in response to a court order--and before relating the steps taken by this Administration to expedite the progress of State Plans toward final approval, let me outline the process by which a State may establish a job safety and health program.

The Act provides for preemption by Federal OSHA of all State enforcement activity and for Federal enforcement of safety and health standards in all States. At the same time the Act also permits States to reassume their authority, upon Federal OSHA's initial approval of a developmental Plan for State administration and enforcement of safety and health standards. To gain initial approval from OSHA for a developmental Plan, a State must provide comprehensive evidence that State enforcement of occupational safety and health standards will be at least as effective as Federal enforcement.

OSHA keeps close watch on a Plan's progress during the developmental phase and may at any time negotiate an "operational status agreement" if, in the agency's judgment, a State is capable of adequately enforcing standards. Under an operational status agreement, any Federal enforcement that duplicates State effort is suspended.

When OSHA has concluded that all the required legal, administrative, and regulatory elements of a State plan are acceptable, the agency may formally certify that the State has the capacity to operate effectively. Such certification is an essential preliminary to final approval.

After certification, OSHA continues to monitor a State Plan closely for at least a year in order to determine whether the program is being implemented effectively. If the agency decides that this is the case, and if the program has been in operation for at least three years, OSHA may grant it final approval. At that time, Federal enforcement authority ceases for those occupational safety and health standards which are included in the State's program--with the caveat that Federal authority to monitor the program is never relinquished but always remains an important responsibility of Federal OSHA.

Since we have been in office we have taken steps to encourage the orderly progress of State Plans toward final OSHA approval. For example, we have eliminated redundant Federal enforcement authority in several States with satisfactory occupational safety and health Plans and have shifted Federal inspectors to Federally-covered States. Operational status agreements confirming these arrangements will be signed shortly with all States still without such agreements.

We have also expedited the review process leading to certification. Of the nine State Plans which had not received certification by January 20, 1981, four have now been certified, and the remainder should receive certification in this fiscal year, assuming they meet the necessary criteria.

"Benchmarks", an Impediment to Final Approval:

A significant obstacle, however, stands in the way of final approval of State Plans. Although eleven Plans have been certified for over a year, OSHA has been unable to grant final approval because of stringent requirements for high levels of enforcement staff--levels known as "benchmarks", which have been imposed upon the States as the result of litigation. These benchmarks were developed by the previous administration in response to a decision of a Federal appeals court.

I have directed that the "benchmark" formula be recalculated to establish staffing requirements which more closely reflect current agency policies. On July 24 of this year, OHSA published official notice of its intent to revise the benchmarks. On October 5, a preliminary proposal was sent to the administrators of State Plans for their comments and review. The proposed revisions would recalculate the benchmark formula to require an average increase of 24 percent in safety staff in Plan States--as contrasted to a 47 percent increase under the old benchmarks--and an average increase of 64 percent in health staff--as contrasted to a 454 percent increase under the benchmarks set by the previous administration. Under the proposed new benchmarks, several States would have sufficient personnel to meet the staffing levels required for final approval. For others, the proposed benchmarks could mean a significant increase in staffing levels. Under our proposal, however, it would be possible for a State to petition OSHA for adjustment of its benchmarks, based on specific State data not considered in the Federal calculation.

I have also instructed our legal staff to explore options that would make it possible to grant final approval without requiring a State Plan to staff at 100 percent of prescribed benchmark levels.

Monitoring:

As noted, the Occupational Safety and Health Act of 1970 requires that Federal monitoring continue even after a State Plan receives final approval. It is the goal of this Administration to keep such monitoring to an essential and effective minimum. An improved system of monitoring now under development would allow States as full autonomy as possible so long as the requirements of the Act are met.

Heretofore, Federal monitoring has relied heavily on a Federal presence in the States. In the early developmental stages of a State Plan, it was helpful, no doubt, to have OSHA monitors accompany State inspectors on visits to workplaces; these visits served a training, as well as a monitoring, function. As State programs gained experience, however, there was less need for hands-on monitoring. By retaining Federal monitors in States with mature Plans, the agency failed to make the most efficient use possible of its limited complement of safety and health professionals. Moreover, the old system did not focus adequately on the critical aspects of State performance.

Consequently, in the past few months we have reduced the number of Federal monitors by one-half. At the same time we are revising our entire system of monitoring State Plans. Our purpose is to develop an efficient and objective system which relies more on State-submitted information than on a Federal presence.

To achieve this goal, we are developing objective indicators of program effectiveness--in part to let the States know the performance goals that are expected of them in part to provide Federal OSHA with a running guide to State performance. We are also taking steps to obtain uniform State date for monitoring purposes. Plan States will be required to provide Federal OSHA with statistical information about their programs, preferably by participating in OSHA's computerized Management Information System. Our overall monitoring system should then be able to rely in large part on analysis of State-submitted information and on our newly developed indicators of effectiveness. Such a system should reduce the need for on-site Federal monitoring.

Federal Preemption--Unity in Diversity:

One of the unique features of the Federal-State relationship under the OSH Act is the preemption by Federal OSHA of State enforcement until such time as a State obtains approval of a job safety and health Plan in accordance with the requirements of the Act. This feature of the OSH Act serves to eliminate duplication of effort by Federal and State governments and also to promote a general level of uniformity among the Federal and State programs.

At the same time, the States are allowed some latitude under the Act in setting standards and enforcement procedures. For example, the State of California has pioneered in a voluntary compliance agreement at a large nuclear plant construction site in San

Onofre where a labor-mangement safety and health committee is being used, apparently successfully, as a self-inspection mechanism.

At times, the discretion allowed the States can create difficulties. A few States, notably California and Michigan, do not routinely adopt Federal standards. Although State standards and enforcement procedures must be at least as effective as the Federal ones, variations in standards and procedures in different States can cause difficulties for employers with establishments in more than one State.

At present we are considering various solutions to this problem. Our goal is to encourage a reasonable degree of uniformity in standards nationwide, while still allowing States flexibility to meet local needs. For the future, at least as far as new standards are concerned, early State participation in the standards-setting process should help alleviate the problem.

Increased Cooperation:

Whenever possible, we have acted to increase Federal-State cooperation and reduce friction between State officials and Federal OSHA. Since assuming office, I have met twice with all the administrators of State occupational safety and health programs as a group, as well as meeting with many of them individually. For the first time in OSHA's history, a special assistant has been appointed to advise the Assistant Secretary on State-plan matters and to maintain liaison with the States. We have also taken steps to include State Plan repesentatives in the revision of the monitoring system now under way. Finally, I have directed my staff to develop mechanisms to assure State participation in all stages of the agency's decisionmaking process on all issues with a direct impact on State programs.

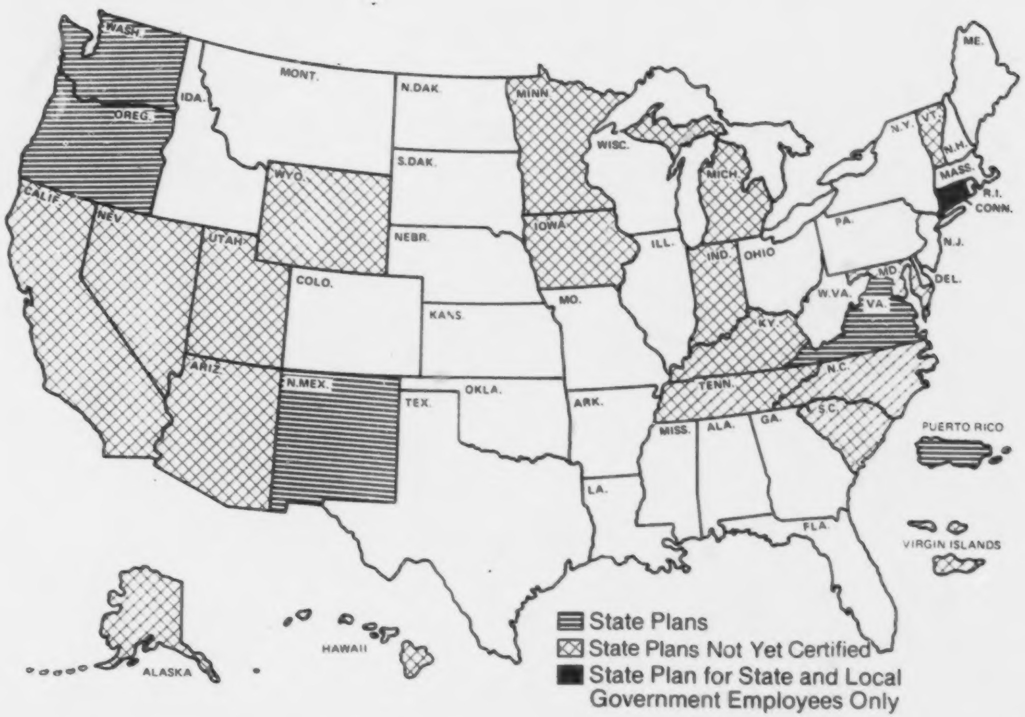
Last but not least, we have taken steps to rescind a withdrawal action against the Indiana Plan and to deny petitions that requested withdrawal of the Virginia Plan, since examination of the most recent evidence revealed that there was insufficient basis for withdrawal. We have also signed a settlement agreement with Virginia to resolve aspects of a Virginia law suit dealing with a withdrawal action threatened against the Virginia Plan.

It is our firm intention to resolve differences that have existed in the past between the States and Federal OSHA and to develop a management and policy framework that in the future will fully integrate the States into the overall OSHA program. It is my belief--and the belief of this administration--that in the last analysis, local problems are best addressed by those closest to them.

I hope that our experience at OSHA in working toward an effective Federal-State relationship is of help to the Subcommittee in its deliberations.

Thank you. I will be happy to answer any questions you may have.

Status of State Occupational Safety and Health Plans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HAWAII
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■ State Plan for State and Local Government Employees Only

October, 1981

Senator **Durenberger**. Our next witness is Bruce Swanson, commissioner for labor and industry, State of Minnesota.

We are pleased that you are with us today. The subcommittee is interested in your perspective on the OSHA program, not just because you run an excellent program in the great State of Minnesota, but also because Minnesota has been in the forefront of assuming enforcement responsibility for many, many years. I believe Minnesota is one of the first States to submit an enforcement plan for Federal OSHA approval. With that limited introduction, why don't you go ahead with whatever statement you want to make.

TESTIMONY OF BRUCE SWANSON, COMMISSIONER FOR LABOR AND INDUSTRY, STATE OF MINNESOTA

Mr. **Swanson**. Thank you, Mr. Chairman.

It is my pleasure to be here this morning to testify before this subcommittee. I do not have a prepared statement. I elected not to take that route but rather to come here to aid you in any way I can with answers to your questions.

Senator **Durenberger**. Let me ask you first to give me some definitional information if you can. Can I get an idea of the dimension of the Minnesota system? How many workplaces do we have in Minnesota? How many have been inspected annually under State inspection? What system of priorities would be used in the Minnesota plan for inspection? What has been the role of Federal monitors, if I am characterizing it correctly, in the Minnesota process?

Mr. **Swanson**. In Minnesota we have approximately 200,000 worksites adjusted seasonally. We have about 80,000 employers. We have over 1½ million employees affected by our act. We are able to make approximately 5,000 inspections annually, a good number of which are on multiemployer construction jobsites.

Concerning Federal monitoring, we have had a Federal OSHA office since 1973 in Minneapolis. They have had an average of half a dozen people in the field, monitoring our 30 OSHA investigators—a rather high ratio we think. The presence of the Federal monitors has been a minor problem. We have established a very good relationship with that OSHA office. It has not been an extreme problem. It simply causes additional burdens on us and on Minnesota employers who must deal with two agencies.

Senator **Durenberger**. Where is Minnesota with regard to the final determination? I know you don't have it at this time. Are you about to reach your final determination?

Mr. **Swanson**. I am unable to give you an answer to that, Mr. Chairman; but let me discuss it nonetheless. I thought we were on the threshold of receiving a final determination back in 1977. At or about that time, we petitioned the then Assistant Secretary of Labor for a final determination. It was not forthcoming at that time. As a matter of fact, the Federal regulations concerning final determination procedures were withdrawn by the Federal Government at that time.

Last Friday, we entered into an operational agreement with this administration and with Mr. Auchter who preceded me here at the table. Hopefully that is one last necessary step or hurdle to get over prior to final determination.

We, of course, still have the issue of benchmarks before us. Let me add, if I may, as an anecdote that when we first looked at final determination, benchmarks were not a factor. That term first came into the picture in 1978.

Senator **Durenberger**. What is the advantage of having a Federal OSHA program in Minnesota?

Mr. **Swanson**. I think that there is a very strong feeling, from both our local level labor organizations and the Minnesota businessman, that there is some inherent advantage in dealing with Minnesotans on Minnesota problems. This is true not only because of the advantage of having someone who perhaps has a greater sensitivity to unique Minnesota problems, but also because of the advantage of having someone who has perhaps a higher level of availability to Minnesotans through the political process and just through the physical geographic location.

We did have fine support politically, of which, again, I know the chairman is aware. Of course, the question, "Why don't we let the Feds take this burden from us," has to come before a responsible legislative body. Time after time the answer from the community has been, "It is worth the difference in cost to us, as Minnesotans, to have this Minnesota program."

Senator **Durenberger**. What is the bottom line? I don't want to put words in your mouth. Is the bottom line "right now?" My question was, what is the advantage of the Federal OSHA program to Minnesota? I would suggest to you that the main advantage is money with which to run a State program. Is that an inaccurate characterization of the advantages of having a Federal program?

Mr. **Swanson**. Senator, with the William Steiger Act being on the books, I tend to see the question more correctly as an issue between whether you are going to have a Federal OSHA program or a Minnesota program.

I made the comment earlier that, prior to the William Steiger Act, there was an OSHA program in Minnesota. It was a safety program or an accident prevention program that, I think, was quite unsophisticated and paled by comparison to what is happening in America today. I for one would not like to see us go back—either in Minnesota or in any other State with which I am familiar—to the pre-OSHA days when there were State accident prevention programs. I believe the workplace in America has gone past that in its needs. I am very pleased that there is an OSHA Act. I am also pleased, as I said earlier, that we have a State-administered OSHA program.

Senator **Durenberger**. I am pleased, too. When we had the Assistant Secretary here, we agreed that we all liked the idea of a national commitment to workplace health and safety. My question to you is, other than the money which it brings in—the $1.274 million or whatever it is—what good is the national program in Minnesota? Is there something in the process that they have brought which has helped?

My next question is going to be, what good is it to Ohio to have a national program? They have never even bothered to submit a plan. Or, what good is it to New York, or Illinois, or anyone else who was in and got out? What we are trying to get to here is a bottom line on how the States can better implement a set of national goals and objectives.

One of the great fears is that the only good it is to Minnesota is money. If the money disappears, I don't have any fear about Minnesota coming back and doing a great job. I do worry about Ohio, Louisiana, South Dakota, and a lot of other States, because I am a U.S. Senator for all of the States, in one sense, and I do care about them. I really would like to know from you how we can do a better job as a national government in making the States a genuine partner in the process—for Ohio to come into the program, or Louisiana, or Kansas, or Nebraska, or South Dakota, or whomever.

Mr. SWANSON. If I may, Senator, I see your question as, "What is the advantage of the William Steiger Act?" Is that the correct interpretation of it?

I have concerns also for Ohio and Louisiana. I will go one step further. I do have concerns for Minnesota if there were not an Occupational Safety and Health Act, if there were not a national program as a base for all of us. I fear, as I alluded to earlier, that perhaps Minnesota, even in the stress of these economic times, might return to what we had. I believe we should not return to what we had.

We had 5,000 inspections in the State of Minnesota. That is many times—50 times, 100 times—greater than the safety and health activity was prior to OSHA. Industrial hygienists, working for the State of Minnesota and inspecting the condition of the workplaces, were unheard of prior to the William Steiger Act. So that national foundation, I believe, is necessary for all of our jurisdictions, including the State of Minnesota. That is the value of the William Steiger Act. That is the value of the national commitment reflected by passage of that act.

Senator DURENBERGER. Having agreed on that, I am very pleased that that is the point which you made. So now, the question gets to be, how best do we utilize that clout of the national commitment? Do we just do it by promising money to people if they conform to certain standards or benchmarks or whatever? Or, are there preferable ways? The Assistant Secretary has spoken to some of his feelings on this subject—some of the areas in which he wants to move in terms of the self-monitoring process, the self-auditing process, and the greater accent on safety and some of those things.

Do you have any suggestions for us and/or for him as to where the Federal role might be performed better than just going through the certification process, benchmarking the staffing and providing 50 percent of the money?

Mr. SWANSON. Let me start with the last part of that. I certainly hope we are not talking about any of that money, not one thin dime of it, being lessened. It seems to me that the role of the Federal Government is to set that base, which it has with legislation. It continues to set a base with the regulations necessary to enforce it. I believe the Federal Government should play a central role in the establishment of standards for all of us as part of that base. I do not believe that that necessarily means that the Federal Government is the only entity in the standard-setting phenomena. I believe that on a cost-benefit basis, it is just more practical for all of us to pool our resources in those more sophisticated technological scientific areas and have it done once for all of us.

In areas where States have more esoteric standard needs, if that need can be shown to be strong enough and if there is no interest at the Federal level because it is so esoteric, then that State should be allowed to go ahead and establish those standards.

The States should also have the right to develop standards that are more effective in their opinion than what is promulgated by the Federal Government. However, all of that is building up to the base of Federal standard setting.

As far as the Federal role in measuring the effectiveness of the occupational safety and health programs across the United States, be it their own programs or be it the State's, that measurement as to what is an effective safety program is a very difficult one to get your hands on. What people have done for 10 years in OSHA, and what people do today in measuring the effectiveness of the American military establishment, for example, is to look to numbers and to look to dollars.

I agree it has inherent weaknesses, but it is better than what we have come up with so far as alternatives. If you ask some of the following witnesses from the business community how they judge the effectiveness of their safety program, I am sure that they will get down to body counts, if I may be crude, or dollar amounts. If one goes up and the other goes down, between year one and year two, then you have an effective safety program. Other than asking the subjective opinions of the Federal organizations, which the chairman referred to earlier, there hasn't been another way yet developed to really define effectiveness.

The chairman mentioned workers' compensation rates. There are too many other factors imposing on the workers' comp rates to say that if you have a good safety program, your workers' comp rates should be going down steadily. I don't think there is a State in the United States that has a good safety program, if that is your measure.

It is a weak measurement to simply look to dollars and to bodies, as the benchmarks do. I am not pleased with those benchmarks. However, I recognize the handicap the Federal administration is under. They should also be measuring the effectiveness of our inspection targeting. They are doing that. They should be measuring the training level that our people have. They have also done that. When you are dealing with the volume that we have to deal with on this Federal program, Senator, I recognize the hardships that the Federal administration has.

Senator **Durenberger**. Let me ask you one final question which, I am sure, you can answer better than Mr. Auchter. We have been talking about the OSHA Act. Within it there are two somewhat different concerns. Safety is one and health is another. The process which is designed to guarantee health of the worker is not necessarily identical to the process which is designed to guarantee industrial safety.

I wonder if, in the whole benchmarking process, or an alternative process of addressing the effectiveness of what we are doing, you have any particular advice to us or to the Assistant Secretary. How might he look more realistically at the health side in order to provide the States, if you will, with the kind of flexibility which is needed if that is important? Maybe the question is, do the States play less of a role because some of these potential industrial problems are open to question? I am thinking about cotton dust and a variety of other things. Maybe that is the only area where the Feds can make some decisions? Talk to us briefly about looking at the health issue differently from the safety issue as we put this into a Federal-State perspective.

Mr. **Swanson**. When we are talking about Federal and State relationships in a health and safety program, I think we are talking more about a difference in degree, rather than a difference in kind. Certainly, the things that I have said about standard establishments go more directly to the health standards than they do to safety standards. I believe then my point is about the difference in degree—the coordination; the partnership, as it were; the flow of information; the understanding of the problem of multi-State employers—those are all intensified when we deal with health as opposed to safety. I see that only as a difference in degree, however. More coordination is needed in that area than in the safety area.

I believe, as a general statement here, that what we have seen out of the new administration gives me reason to hope that the level of cooperation, the enthusiasm from the States toward cooperation with the Federal Government, is something that is going to grow—if I understand what Secretary Auchter has been saying; and if, indeed, the program develops the way he has outlined it.

Senator **Durenberger**. Thank you very much for your testimony and for coming.

Our next witness is Lowell Jackson, secretary of industry, labor and human relations from the State of Wisconsin. He was asked to appear before the subcommittee today because Wisconsin had a 1-year experience with the Federal OSHA and has chosen not to assume proportionate responsibilities. In the State of Wisconsin, the Federal OSHA monitors compliance.

Mr. Jackson, we are pleased that you were able to come here today and have prepared a statement for us in advance. You can either read or comment on it. It will be put in the record in full.

TESTIMONY OF LOWELL B. JACKSON, SECRETARY OF INDUSTRY, LABOR AND HUMAN RELATIONS, STATE OF WISCONSIN

Mr. **Jackson**. Thank you, Mr. Chairman.

It is a pleasure to be here. I will briefly refer to my statement, but not in its entirety.

As you noted in your letter inviting the State of Wisconsin to this hearing, our State has had experience with and without a State OSHA plan. I must say we have had much more experience without such an arrangement than with it. My remarks by necessity today are going to have more of a historical than a current focus on OSHA.

Our State plan was operated for only a 1-year period that ended in 1975. We don't feel that was enough time for us to really determine the potential of any plan in lowering our job injury and illness rates, and to evaluate the attitude of Wisconsin employers and employees on a State-operated OSHA program.

Our program ended when the Wisconsin Legislature voted against continued funding of the State's 50 percent share of the budget for the State plan. This happened mainly because of the economics—we saved about $420,000 in the first year alone. The legislature also realized that ending the funding for the program didn't mean the program would end. Responsibility for its enforcement simply would shift from one jurisdiction to another. Another influence on the legislature's decision at that time was the awareness that both organized labor and the State manufacturers' association were opposed to the concept of a State plan—organized labor because of national organized labor policies, and employers because of an awareness that a federally administered OSHA program would result in fewer inspections than a State program.

Six years have passed since the Federal Government assumed complete responsibility for private sector job safety and health in Wisconsin. I have attached a chart to my statement, Mr. Chairman, which will show you that the number and rate of job injuries in Wisconsin since that time has increased sharply.[1]

Until 1971, Wisconsin operated its own safety and health program without Federal involvement. We believe it was widely recognized as one of the better programs among the States. For the last 5 years of that period, we specifically conducted an intensified inspection program which we tagged "Operation Safe Place." We increased our 20-person inspection staff by another 36 inspectors. During that period, the injury rate held steady for the most part, as you can see from the chart.

Until 1971, our State approach encouraged voluntary compliance that was coupled with extensive training seminars for both employers and employees. Those employers who were cited for violations were allowed a reasonable period of time to correct violations. Only if they then failed to make corrections were their cases referred to the State attorney general for prosecution. This is the same system that is used, incidentally, with our general safety and building inspection program, which is operated by my department.

In 1971, OSHA was enacted and Wisconsin began a new era in job safety and health, now in concert with the Federal Government. Referring again to the attached chart, it shows from 1971 onward a steady increase in the number and rate of job injuries in Wisconsin. What caused the increase? We in Wisconsin believe that OSHA's methods and procedures developed an adversarial relationship between employers and OSHA. I refer specifically to such practices as "first-instance" sanctions—or penalties—the use of substantially untrained and unqualified inspectors, the lack of an effective training function for employers, a burdensome paper system, and an inflexible approach to safety and health compliance. The end result, I believe, has been an increasing job injury rate, not realizing the benefits that OSHA was designed to provide.

A plus factor in Wisconsin today is our onsite OSHA consultation program, in which the State is involved with the Federal Government. My department administers the safety portion and our State Department of Health and Social Services administers the industrial hygiene part. We believe this consultative program has been well received by the employers. We also believe that that has happened because our personnel are very highly qualified and trained. We offer a total package across these two areas of occupational safety and health hazard control. We do look forward to continuing support from OSHA both in promotion and fiscal support of this program.

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[1] See p. 39.

As I said, our brief experience with the State OSHA program under 18(b) probably does not provide enough experience to identify all of the impediments which may exist today toward a greater State participation. Fifty-fifty funding under the current circumstances is not an adequate incentive to interest States to return, when Federal management of the program is so total and overwhelming and, we believe, possibly counter-productive. States need to be allowed individual flexibility to provide the kind of inspection and enforcement program that does the best job in the experience of that State.

Wisconsin has always felt, too, that a major drawback to a federally managed State plan was the cumbersome paper documentation that treats each inspection as a preparation for a long and legal action. One of the results of that was a substantial loss in inspector productivity. We are also aware that much of organized labor nationally continues to be opposed to the concept of State plans. Wisconsin has not been as fortunate as Minnesota in having the support of organized labor behind a State-run plan.

In the current economic environment in Wisconsin, our legislature is dealing with hundreds of millions of dollars in shortages because of Federal cutbacks. Clearly, 50 percent funding for Wisconsin—whatever that amount would be in terms of the State going back to the program—is really 100 percent above our current State budget for this activity.

There do appear to be some incentives for a State plan, one of which was in the subcommittee's letter of invitation to testify. You indicated that the Federal intent is to reduce the OSHA oversight role with the States. Steps like these which promote State control may well encourage a more productive relationship between employers and the State enforcement agencies.

The job injury count also should be reduced, if inspectors under a State plan could correlate accident investigations for workers' compensation purposes with job safety and health enforcement activities. This is not possible, at present, under State preemption by OSHA because State accident investigation can only relate to increased or decreased workers' compensation benefits. Minnesota, for example, has been able to reduce job injuries under its State plan operation.

I urge you to keep in mind that the positive impact of an effective job safety and health program can be even greater in difficult economic times, as we now face. Any reduction in job-related injury and illness rates can mean greater productivity and profits. It can be a cost-effective program.

However, if Wisconsin is to reconsider administration of this program, it must see better inducements than those offered. They must include increased funding and more flexibility in the State administration of the program. I am sure you have heard that from many quarters on many subjects.

Specifically eliminating or substantially modifying the first instance penalty provision of the act and decreasing the Federal oversight also is necessary. Also, working with organized labor to solicit support for State plans is going to be mandatory.

Thank you very much for this opportunity. I will entertain your questions.

Senator **Durenberger.** Thank you very much. You have indicated where you think organized labor in Wisconsin is on this issue. What about the Wisconsin Employers Association? Will they change their opinion about the Federal OSHA program, when the people of the country change Presidents?

Mr. **Jackson.** I am not sure whether or not the Manufacturers Association has had the necessity to consider it. Last week I spoke with their president, Mr. Hassett. He indicated that he had heard very little one way or the other from his association about OSHA. From the perspective of the employers, I think that is what they had in mind back in 1975 when they testified against the State-run plan.

Senator **Durenberger.** Are they pleased with the way the Federal inspection is working in Wisconsin?

Mr. **Jackson.** I think those who are inspected have greater concerns about the method of inspection. I think it must be remembered, however, that the number of those inspections compared to the number of workplaces is relatively few. So this is not something where the employers in Wisconsin are rising up and protesting the inspections. They are already accustomed to a fairly heavy dose of State inspections in safety and health on a number of other matters. I don't think that OSHA is as onerous to our employers as it may be in some other areas of the country.

Senator **Durenberger.** Are there some conditions under which you think Wisconsin might be able to participate in OSHA?

Mr. **Jackson.** What has been mentioned several times is the effect of Federal money. You put your finger on it. It did encourage many States to get into the program. It is a relatively low sharing rate compared to many other Federal programs in which the interest of the Federal Government, as an oversight on all States, is generally expressed at a much higher level of participation than 50 percent. I am more familiar with the transportation matching because I come most recently from that area of Wisconsin. A considerably higher level of support for something considered essentially in the national interest is there.

I think, under the current realities in our State, it would be difficult—if not impossible—for us to get our legislature to essentially increase the State portion from zero to some other number, to get in the program. If there were no Federal money at all, however, there is no question that Wisconsin, Minnesota, and many other States would find it necessary to continue such a program for its own interests and the interests of its citizens.

Senator **Durenberger.** It seems to me that the position of national labor—I should say that without giving a definition, because we have a witness today who will disagree with this statement. The building and construction trades in Minnesota went to bat against so-called national labor because we have a good State program in Minnesota. The theory for pushing it all into a Federal program simply is that that is the only way to guarantee the whole system will work. It certainly is premised on the fact that there is some sort of bottomless pit here in Washington; or, at least, a fast-moving printing press which grinds out the money that it takes to run this program.

But to take the reverse view—which having this hearing in this subcommittee might suggest—with the right mix of incentives, all of the States are going to do a better job than the national program will do. I am sure it raises the specter of problems in interstate commerce. Certain States may rip off their employees to the benefit of the bottom line, or businesses in those States will in order to include the benefit of the bottom line; whereas other States will suffer discrimination because they have tough OSHA regulations.

I am curious to know what thoughts, if any, you might have relative to our ability to internalize some of the costs of health, safety, and inspection. In other words, rather than depending either on that printing press or the taxpayers generally to fund occupational safety and health, could we move more in the direction of having the consumers of those products pay the costs of safety and health by internalizing more of the costs? I know that is difficult. However, I am curious to know what suggestion you might have for us on this.

Mr. JACKSON. You expand my authority in economics rather far with that question.

Let me just respond in two ways. In terms of internalizing the cost within government itself, all government levels—including State and Federal, must do a better job with what they have. I think we heard Assistant Secretary Auchter indicate his intention to absorb a 12-percent reduction by improving management. We went through the same thing at the State level with diminishing resources. In fact, internalizing the cost of safety and health by having the consumers pay for it is part and parcel of what it costs the manufacturers or the construction industry in that case to produce their product. It will not be paid for by the printing press. It will be paid for by the consumer.

I think it is the essence of good government and good management to help those employers who we, at the government level, perceive to have a health or safety problem. We must help them solve that problem without merely launching the careers of more and more lawyers in the health and safety field. We must try to point out—as we think we have done successfully in the State of Wisconsin prior to OSHA—the productivity of the business. Ultimately, the cost to the consumer will be positively affected.

Certainly those of us in government, who are in charge of things like workers' compensation, have to answer to the employers for the rates they are charged to provide that protection. We are always cognizant of that particular interest.

So I think, frankly, there is a reservoir of concern at all government levels, certainly within our State and in yours, to make sure that every effort is made in order to increase the productivity aspects of good health and safety at the working place.

Senator DURENBERGER. The specific concern reflected in your opening statement, or your response to the first question, is that 100 percent of the people are paying for 5 percent of the workplace inspection—or some other, relatively small percentage. It is probably very high in the construction industry and in certain standard industrial classifications. Yet, all taxpayers pay the load for certain types of more dangerous activities. It seems to me that it would make sense to try to find a way to internalize, within those particular industries, some of the costs of the plan.

Since the first of the year—I do not know how long you have had your particular job—has anybody from the Federal OSHA talked to you about trying to sell you a State plan?

Mr. **Jackson**. A week ago in Wisconsin I had the opportunity to meet Thorne Auchter, at an appearance he was making with our Manufacturers Association Conference. I discussed that possibility with him. He repeated to me, as he did today in his testimony, that currently they are only going to handle the States they have in the program. They do not see, at least in the near and intermediate future, an expansion to other States which are not now in the program. That, essentially, indicated that it is not something we are going to be faced with very quickly in Wisconsin.

Senator **Durenberger**. It is not?

Mr. **Jackson**. It is not something we will be faced with in Wisconsin in terms of any initiative from the Federal Government.

Senator **Durenberger**. You are not making any initiatives the other way at the present time?

Mr. **Jackson**. Not at the present time.

Senator **Durenberger**. Thank you very much. We appreciate your testimony.

[The prepared statement of Mr. Jackson, with attachment, follows:]

THE PREPARED STATEMENT OF LOWELL B. JACKSON

My purpose today is to (a) briefly summarize Wisconsin's experience in job safety since the advent of the U.S. Occupational Safety and Health Act, (b) identify both impediments and incentives to state-operated OSHA programs, and (c) offer some recommendations for consideration by the Intergovernmental Relations Subcommittee.

As you noted in your letter of invitation to the State of Wisconsin, Wisconsin is a state which has had experience with and without a state OSHA plan. We have had much more experience without such an arrangement. Our state plan was operated for only a one-year period, and that ended in mid-1975. That was hardly enough time for us to determine the potential of a state plan in lowering the state's job injury and illness rates, and to evaluate the attitude of Wisconsin employers to a state-operated OSHA program.

Our program ended when the Wisconsin Legislature voted against continued funding of the state's 50% share of the budget for the state plan. This happened mainly because of the economics -- we saved about $420,000 in the first year alone. The Legislature also realized that ending the funding for the program didn't mean the program would end; responsibility for enforcement simply would shift from one jurisdiction to another. Another influence on the Legislature's decision at that time was the awareness that both organized labor and the state manufacturers' association were opposed to the concept of a state plan -- organized labor because of national organized labor policies, and employers because of an awareness that a federally-administered OSHA program would result in fewer inspections than a state program.

Now, six years have passed since the Federal Government assumed responsibility for job safety and health in Wisconsin. As you can see from the chart I've submitted with this testimony, marked Attachment A, the rate of job injuries has increased sharply.

Until 1971, Wisconsin operated its own job safety and health inspection program, without federal involvement, and was widely recognized as having one of the best programs among the states. For the last five years of that period, we conducted an intensified inspection program which we tagged, "Operation Safe Place." We increased our 20-person inspection staff by another 36 inspectors. During that period, the injury rate held steady for the most part.

Until 1971, our state approach encouraged voluntary compliance and was coupled with extensive training seminars for both employers and employes. Employers cited for violations were allowed a reasonable period of time to correct violations; only if they then failed to make corrections were their cases referred to the state attorney general for prosecution.

In 1971, OSHA was enacted and Wisconsin began a new era in job safety and health, now in concert with the Federal Government. What our chart shows from 1971 onward is a steady increase -- with one exception -- in the number of job injuries in Wisconsin. The exception appears to have had nothing to do with OSHA policies and procedures, but rather the reduction in employment levels resulting from the 1974-75 recession. This decline in injuries was typical of the experience of other states in this period, I understand.

What caused the increase?

We believe that OSHA's methods and procedures developed an adversarial relationship between employers and OSHA. I refer specifically to such practices as "first-instance" sanctions (penalties), the use of substantially untrained and unqualified inspectors, the lack of an effective training function for employers, a burdensome paper system, and an inflexible approach to safety and health compliance. The end result, I believe, has been an increasing job injury rate.

The "plus" factor in Wisconsin today has been, and is, our On-Site OSHA Consultation Program. The department I represent administers the safety portion and our State Department of Health and Social Services administers the industrial hygiene activities. We believe the program has been well received by employers. We also believe that has happened because our personnel are highly-qualified and trained, and because we offer a "total package" of occupational safety and health-hazard control. We look forward to increased support from OSHA, both in promotion and fiscal support of this program.

Wisconsin's brief experience with a state program probably does not provide us with enough experience to identify all of the impediments which may exist today towards a greater state participation. However, 50-50 funding is not an adequate incentive to interest a state -- at least my state -- when federal management of the program is total and overwhelming. States must be allowed individual flexibility to provide the kind of inspection and enforcement program that does the best job in that state. The current 50-50 arrangement is not a true federal-state partnership.

Wisconsin always has felt, too, that a major drawback to a federally-managed state plan was the cumbersome OSHA paper documentation that treats each inspection as a preparation for a legal action. One of the results of that was a substantial loss of inspector productivity.

We also are aware, as you must be, that much of organized labor nationally remains opposed to the concept of state plans. Wisconsin has not been as fortunate as Minnesota in having the full support of organized labor behind a state plan.

Finally, our current economic environment and the question of state plan financing are additional impediments; 50% funding for Wisconsin, whatever that amount of money turns out to be, is 100% above the current state budget for this activity.

There do appear to be some incentives for a state plan.

One incentive is in the letter of invitation I received from this subcommittee in which you indicate that federal intent is to reduce the OSHA oversight role with the states. Steps like these which promote state control may well encourage a more productive relationship between employers and the state enforcement agencies.

The job injury count also should be reduced if inspectors under a state plan could correlate accident investigations for worker's compensation purposes with job safety and health enforcement activities. This is not possible, at present, under state preemption by OSHA where accident investigation can only relate to increased or decreased worker's compensation benefits. Minnesota, for example, has been able to reduce job injuries under its state plan operation.

I would make some recommendations for consideration by this subcommittee.

I would urge you to keep in mind that the positive impact of an effective job safety and health program can be even greater in difficult economic times, such as we now face. Any reduction in job-related injury and illness rates can mean greater productivity and profits. It can be a cost-effective program.

However, if Wisconsin is to reconsider administration of this program, it must see better inducements than those now offered. Better inducements include increased federal funding and more flexibility in state administration.

Eliminating or substantially modifying the "first instance" penalty provision of the act, and decreasing the federal oversight also are necessary. Working with organized labor to solicit support for state plans will be mandatory.

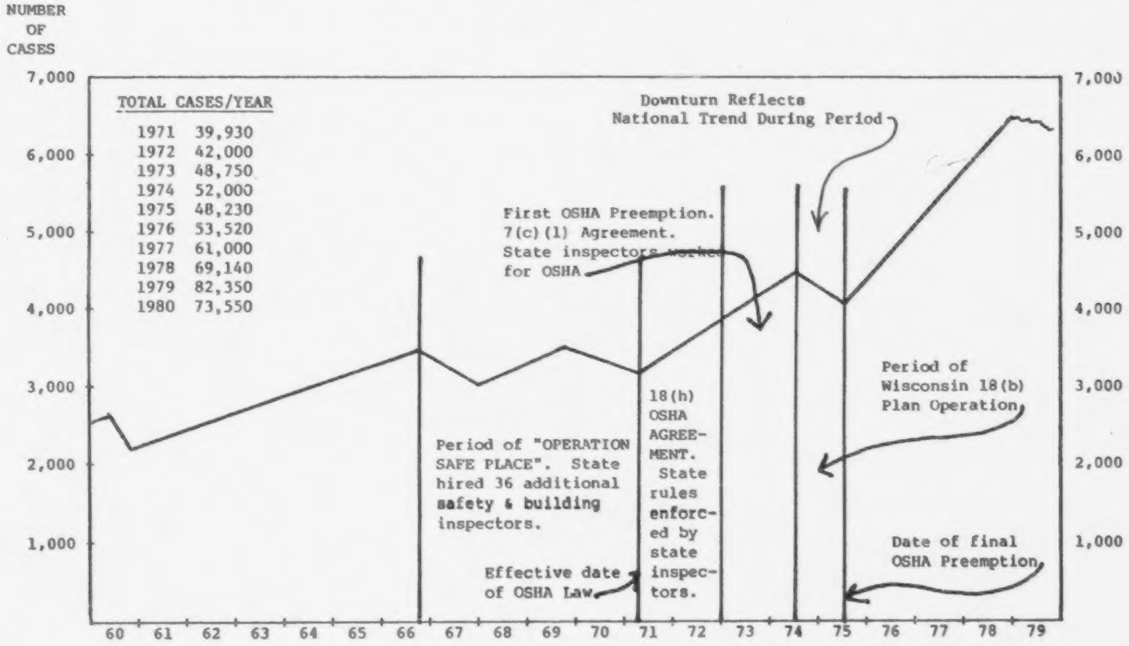
Thank you very much for this opportunity to address this subcommittee.

ATTACHMENT A

(from: April-June 1979
DILHR RISK MANAGEMENT BULLETIN)

WISCONSIN DILHR

LIKELY COMPENSABLE CASES REPORTED TO WORKER'S COMPENSATION BY MONTH
JANUARY 1960 TO 1979



TOTAL CASES/YEAR	
1971	39,930
1972	42,000
1973	48,750
1974	52,000
1975	48,230
1976	53,520
1977	61,000
1978	69,140
1979	82,350
1980	73,550

10/81

Senator **Durenberger.** The next witness is Dr. Richard Boggs, director, Occupational Safety and Health, Organization Resources Counselors.

Mr. Boggs, we welcome you. We would appreciate it if you would describe the organization you represent, and then your interest in OSHA.

TESTIMONY OF RICHARD F. BOGGS, DIRECTOR, OCCUPATIONAL SAFETY AND HEALTH, ORGANIZATION RESOURCES COUNSELORS. INC., ACCOMPANIED BY ROBERT LAGATHER, COUNSEL, ORC STAFF

Mr. **Boggs.** Thank you very much, Mr. Chairman, for this opportunity to testify. I will summarize my written statement. Accompanying me today as counsel is Robert Lagather, member of the ORC staff.

My comments this morning represent the views of ORC and not necessarily those of any particular segment of industry or the business community.

ORC is a consulting firm offering professional assistance in dealing with many aspects of human resources management, including the successful planning and implementation of occupational safety and health programs. ORC is directly interested in the issues raised by this subcommittee on the subject of State programs for occupational safety and health. Most of the ORC occupational safety and health group member companies which we represent have worksites located in more than one State. As a result they are interested in the development and activities of State occupational safety and health programs.

From the very beginning of the Federal OSHA program, State participation in the enforcement program of OSHA has been the subject of a continuing controversy. In fact, congressional enactment of the Occupational Safety and Health Act itself was, in part, initiated because of the recognition that States often had inadequate safety and health programs, or no programs at all. The controversy has been compounded by concerns between Federal and State agencies regarding the proper administration of programs; labor resistance to State participation; and business community concerns that regulations would be applied differently by the various States, or that there could be a great diversity of standards and regulations. Further, the failure of some States to approve plans and to properly fund or staff State programs has caused great concern.

There is an urgent need for consistent Federal standards and regulations as well as close Federal monitoring of enforcement programs. Differences in regulations among the States can interfere with and have a substantial impact on interstate commerce. For example, it can place one company at a competitive disadvantage or cause the use of certain products to be restricted in some States because of improper labeling or not meeting the safety or health requirements of a particular State. Even if regulations are identical, employers with multi-State operations must maintain a separate liaison with each State program. When one considers the different enforcement philosophies of the various States and the different administrators involved, it is easy to recognize the great complexity, not to mention the greatly increased, administrative costs that could result.

The quality of the enforcement of State programs varies substantially from State to State. Philosophies and commitments of the State administrators and legislatures vary greatly. This impacts on the amount of funds committed, the qualifications of personnel selected to administer the State programs, and the willingness of the States to promote and carry out effective safety and health programs regardless of political persuasions and economic considerations.

We believe that several things must be done in order to assure properly administered State programs that will protect the safety and health of the workers. First, both the Federal and the State government must assure adequate funding. These funds must be committed directly to the enforcement of the OSHA programs.

Second, it is necessary that each State commit a sufficient number of qualified personnel to the program. It does no good for a State to get a safety and health plan certified by OSHA to enforce safety and health statutes without a sufficient number of trained people to insure that the program objectives can be effectively carried out.

Third, there should be consistent enforcement of standards and regulations throughout the various States. From a business perspective, inconsistencies will tend to put some employers at a competitive disadvantage by having differing regulatory requirements based upon geographical location. Additionally, because of the transient nature of the work force in many industries, differing regulations and enforcement policies will create confusion and varying degrees of protection for employees.

Fourth, the Federal Government must maintain comprehensive monitoring of State programs. When a State plan is put into effect, the State should be committed to abide by the established Federal standards and regulations. In order to properly protect the workers, monitoring of each State plan and performance must be established and maintained.

To summarize, the success of the State programs requires the meeting of certain basic criteria. There must be consistency of standards nationwide. The level of funding for the programs, both from Federal and State sources, must be adequate to attract and hold skilled administrative and technical personnel. There must be active Federal monitoring to insure a consistent framework. It is our view that this continuing Federal monitoring is necessary to prevent many of the problems described above. In particular, noncomparable regulations and erratic enforcement must be minimized.

I should also emphasize that State occupational safety and health enforcement programs can have a significant advantage over Federal programs when properly coordinated. The States should be more familiar with the industrial environment and the local needs of their own particular areas. Being closer to the work settings, they should be in a better position to provide consultation and assistance to address local needs.

In conclusion, I would like to emphasize that industry and States can work with the Federal Government as responsible partners to provide effective safety and health programs for American workers. The task is not an easy one but, given this administration's resolve to delegate additional responsibilities to the States, a further expansion of this cooperative effort, recognizing and addressing some of the concerns expressed, is appropriate and in the best interest of occupational safety and health.

We hope these comments will be helpful in your consideration of State implementation of Federal standards. I would be pleased to answer any questions.

Senator **Durenberger.** Thank you.

Let me start with your first point, adequate funding. You qualified that by saying: "Directed at the program." Mr. Jackson, who preceded you, came to his job from the Wisconsin Department of Transportation where he is used to dedicate funds. I raised the issue with him of, in another sense, a reliable source of revenue to do the job. I spoke in terms of internalizing more of the costs of the specific industries. I suppose one could think of a payroll tax to accomplish this as opposed to revenue. One could put a tax on the accidents of industrial workers or others. One could conjure up some other kind of a dedicated fund.

Everybody here this morning has talked, in one way or another, about the fact that you are not going to implement at the State level, or at any level other than the national level, a national policy unless you have the financing to deliver on the commitment. We are dealing here with relatively small budgets—I can't remember the figures right offhand. To do a job that we are not doing as well in this Nation as we ought to be doing, those who are committed to this—the inspectors, administrators and other bureaucrats—ought to find some alternative to general revenue financing to get this job done.

I just wondered if you or your organization have given any thought to alternatives for additional, more reliable funding of safety and health?

Mr. **Boggs.** No, we haven't given a lot of thought to that. However, when you mentioned it earlier this morning, it struck a note of attention. I think for the first time we are seeing an effort by the current administration to try to adopt new and innovative procedures to carry out safety and health programs at the Federal level. We have heard some of them described by Mr. Auchter and others. I think that same kind of thinking should go into the State planning area. While I haven't given a lot of thought to it, I am sure there are some plans that one could look at on how to address the budgetary problem which, as I have said, is of key concern.

Senator **Durenberger.** In the business of the Federal monitoring, we have had only 10 years of experience. You can look at programs like this in the Department of Labor and find similar experiences going all the way back to 1931 with the Davis-Bacon Act. It seems that every time we shift from one administration to another—particularly from Republican to Democrat, or Democrat to Republican—we find a major change in the Federal monitoring process. That does not seem to serve the workers of America very well regardless of which way you are changing.

You suggested that just the notion of inconsistency is bad, and that we have to somehow find the important role for Federal monitoring. We need to deal with the issue of differing regulations and standards from one jurisdiction to another. We need basic consistency. The question I am asking you is, is that even possible? When you deal with an issue involving the workers in America, is it possible to avoid the political problems that come, particularly with the association of many unions in this country with one political party? Are we just blowing smoke when we talk about consistency?

Mr. **Boggs**. I hope the answer to that is "No," but I am worried about it also. In my statement I addressed the concern about consistency between States. I did not address the differences in consistency between the changes in administrations, but that is a very, very great concern. Organization Resources Counselors are trying very hard to work with the new administration to see if it is possible to hit what I call middle-of-the-road philosophies on this issue. We have seen the pendulum swing back and forth too many times over the last 20 years. Whether it is possible to try to get this to the point where the inconsistencies are minimized, I don't know. It will be very critical to watch this during the next 2 to 4 years. I think the current administration is trying to do that if possible.

Senator **Durenberger**. Let me ask you the same question, putting on a Democratic hat. When Republican Presidents enter office, there is always the notion that we can get government off the backs of people, particularly in general and through all the industries and the employers in this country. That may be. Some say that if the Federal OSHA just went away entirely, it would be the best thing that could happen to the economy of America, the free enterprise system and all that sort of thing.

Where do you come down on the issue of a national role in occupational safety and health?

Mr. **Boggs**. I think it would be a mistake to see a backing off of the responsibility that Congress gave to OSHA; however, the possibility is there. I think it would be a mistake. We are concerned that, no matter which administration has been involved, oftentimes the protection of the American worker does not always seem to be the prime reason for some of the decisionmaking. I think that needs to be up front, no matter which administration it is.

Senator **Durenberger**. The Assistant Secretary talked about a new management information system which he is trying to build. Are you generally familiar with it? In your view, will this system result in some uniform monitoring of States?

Mr. **Boggs**. There is concern on that subject. I hope that it will work. In the past we have concentrated too much of our attention on the number of compliance visits, perhaps misdirecting them. This is not adequate motivation of the people in the field who are carrying out some of the enforcement programs. They are attempting to correct some of these or trying different approaches. We certainly hope they work. We are trying to encourage that on our part. If they don't work, I hope there will be another approach. We do know that past approaches haven't worked.

Senator **Durenberger**. My last question will deal with an issue I raised earlier concerning standards. You mentioned the problem of labeling hazardous materials in your statement. Six States have developed their own rules while the Federal OSHA is still wrestling with the problem. You also mentioned the problem of some States partially regulating substances such as carcinogens whereas OSHA has yet to act. If this keeps up, there are some problems that the major corporations could face if various States adopt a varying set of standards.

What, in your opinion, should be the Federal Government's policy in this area?

Mr. BOGGS. About all I can say is consistency. It is easy to point that out as a problem, but the solution is not easy. With my past experience of being involved in the development of rulemaking, I can look at it from the business standpoint as well as the government regulatory standpoint. I don't have any solutions for it. We are working closely with OSHA now on this whole area, labeling is only an example. It is very easy to raise what the problems are, but to come up with the solution is extremely difficult. I would hope in the labeling area, perhaps in the carcinogen area as well, proper direction and guidance from the Federal Government can minimize the impact of the difficulties that I described in my testimony.

Senator DURENBERGER. Thank you very much for your testimony. We appreciate your being here today.

[The prepared statement of Mr. Boggs follows:]

PREPARED STATEMENT OF RICHARD F. BOGGS

Mr. Chairman and members of the Subcommittee, my name is Richard F. Boggs. I am Director of Occupational Safety and Health for Organization Resources Counselors, Inc. (ORC). Accompanying me today as counsel is Robert B. Lagather who is a member of the ORC staff.

ORC is a consulting firm offering professional assistance in dealing with many aspects of human resources management, including the successful planning and implementation of occupational safety and health programs. ORC is pleased that this Subcommittee is examining the implementation, development and enforcement of state occupational safety and health programs. We also appreciate having the opportunity to present our comments on this important issue and will expand at your convenience on any of the points that we raise. My comments represent the views of ORC and not those of any particular segment of industry or the business community.

Soon after passage of the Occupational Safety and Health Act in 1970, ORC formed its Occupational Safety and Health Group, composed of safety professionals, occupational physicians, industrial hygienists, and attorneys. This Group represents a broad cross-section of industry and provides a link between member companies and governmental occupational safety and health agencies. ORC also maintains working relationships with various safety and health professional groups, major industry groups, and trade associations. The activities of the ORC Occupational Safety and Health Group are based on the premise that providing safe and healthful working conditions is the mutual responsibility of employers, employees and government, and that worker safety and health cannot be protected without the cooperation and commitment of all these groups.

ORC is directly interested in the issues raised by this Subcommittee on the subject of state programs for occupational safety and health. Most of the ORC Occupational Safety and Health Group member companies have worksites located in more than one state and, as a result, are interested in the development and activities of state occupational safety and health programs.

From the very beginning of the Federal OSHA program, state participation in the enforcement program of OSHA has been the subject of continuing controversy. In fact, Congressional enactment of the Occupational Safety and Health Act itself was, in part, initiated because of a recognition that states often had inadequate safety and health programs or no programs at all. The controversy has been compounded by concerns between Federal and state agencies regarding the proper administration of programs, labor resistance to state participation, and business community concerns that regulations would be applied differently by the various states or that there could be a great diversity of standards and regulations. Further, the failure of some states with approved plans to properly fund or staff state programs has caused great concern.

There is an urgent need for consistent Federal standards and regulations as well as close Federal monitoring of enforcement programs. Regulations differ from state to state. California is currently developing health standards that are in some cases more restrictive than federal standards. Differences in regulations among the states can interfere with and have a substantial impact on interstate commerce. For example, it can place one company at a competitive disadvantage or cause the use of certain products to be restricted in some states because of improper labelling or not meeting safety or health requirements of a particular state. Even if regulations are identical, employers with multi-state operations must maintain separate liaison with each state program. When one considers the different enforcement philosophies of the various states and the different administrators involved, it is easy to recognize the great complexity, not to mention the greatly increased administrative costs, that could result. It is recognized that difficulties can also arise with a federally administered program. Federal field staffs also vary in their interpretation of regulations and in the attitudes of administrators. However, these differences can be more easily resolved in a Federal program simply because only one agency and one national enforcement philosophy are involved.

Let me give you an example of how apparently simple matters can become complex and difficult to solve. The Federal as well as state governments, along with employers and employees, are all concerned with the subject of labelling of hazardous materials. The Federal OSHA is now completing the development of a proposal on this subject and more than a half dozen states have recently issued new regulations pertaining to the labelling of hazardous materials. Most observers would agree that employees and employers purchasing such products should be informed of contents containing potentially harmful materials.

So why is there a problem? Let us look! An identified hazardous material could be drinking water. Should containers containing a certain percentage of water be labeled? By the Federal government? By any state so desiring? Another example, most people knowledgeable of occupational safety and health problems will agree that flour dust presents a potentially significant health hazard. Do you label a box of cake mix that may expose a housewife to flour dust in the kitchen? Some will scoff at such "silly" examples, but should they? Who decides whether labels must be provided and who determines how many labels and what should be printed on these labels?

How do we treat the extremely complex and difficult area of possible human carcinogens? Will each state make independent determinations? Can you imagine the impact such future decisions could have on commerce as we know it today? Congress, in considering the need for the Occupational Safety and Health Act, recognized the problem of states having their own individual standards and regulations and included in Section 18(c)(2) the wording "... and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce." Again, the issue sounds so straightforward, but those of us who are wrestling with the issue are finding that the solution is extremely complex.

The quality of enforcement of state programs varies substantially from state to state. Philosophies and commitment of state administrators and legislatures vary greatly. This impacts on the amount of funds committed, the qualifications of personnel selected to administer the state programs, and the willingness of the states to promote and carry out effective safety and health programs regardless of political persuasions and economic considerations. Further, the state's willingness to require appropriate skill levels for applicants applying for safety and health jobs and insistence on continued training is vital.

The current Administration must address these problems in order to fulfill its commitment to transfer the operation of the regulatory program from the Federal to state governments, and in particular to vest the states with primary enforcement authority in the safety and health areas.

We believe that several things must be done in order to assure properly administered state programs that will protect the safety and health of workers.

First, both the Federal and state governments must assure adequate funding. These funds must be committed directly to enforcement of OSHA programs. Funds granted by the Federal government must be properly allocated based on the mix of industries within a state and worker exposures that come under the authority of a state program.

Second, it is necessary that each State commit a sufficient number of qualified personnel to the program. It does no good for a state to get a safety and health plan certified by OSHA to enforce the safety and health statute without a sufficient number of trained people to ensure that the program objectives can be effectively carried out.

Third, there should be consistent enforcement of standards and regulations throughout the various states. From a business perspective, inconsistencies will tend to put some employers at a competitive disadvantage by having differing regulatory requirements based upon geographical location. Additionally, because of the transient nature of the work force in many industries, differing regulations and enforcement policies will create confusion and varying degrees of protection for employees.

Fourth, the Federal government must maintain comprehensive monitoring of state programs. When a state plan is put in effect, the state should be committed to abide by the established Federal standards and regulations. In order to properly protect the workers, monitoring of each state plan and performance must be established and maintained.

Delegation of OSHA enforcement to the states should be accompanied by a strong improvement in the training of compliance officers. The Federal training role is critical, because it is unrealistic to expect that individual states can independently provide adequate training for field personnel. Federal OSHA should expand its training capabilities to meet the needs of state enforcement programs. This Federal effort can further enhance the training of field personnel in the important area of providing effective advice and counsel to employers, particularly smaller companies that cannot afford to employ sufficient professional safety and health staffs. In both ways, the accomplishment of occupational safety and health objectives will be directly encouraged.

To summarize, the success of state programs requires the meeting of certain basic criteria. There must be consistency of standards nationwide. The level of funding for the programs, both from Federal and state sources, must be adequate to attract and hold skilled administrative and technical personnel. There must be active Federal monitoring to ensure a consistent framework. It is our view that this continuing Federal monitoring is necessary to prevent many of the problems described above. In particular, non-comparable regulations and erratic enforcement must be minimized. An ideal state program would include Federal standards in which the states participated in the hearing process during normal rulemaking and in state enforcement under Federal supervision.

I should also emphasize that state occupational safety and health enforcement programs can have significant advantages (when properly coordinated) over Federal programs. The states should be more familiar with the industrial environment and local needs of their own particular areas. Being closer to the work settings, they should be in a better position to provide consultation and assistance to address local needs. In conclusion, I would like to emphasize that industry and the states can work with the Federal government as responsible partners to provide effective safety and health programs for American workers. The task is not an easy one, but given this Adminstration's resolve to delegate additional responsiblities to the states, a further expansion of this cooperative effort, recognizing and addressing some of the concerns expressed, is appropriate and in the best interest of occupational safety and health.

We hope these comments will be helpful in your consideration of state implementation of Federal standards. I would be pleased to have an opportunity to expand on any issues that I have raised or to answer questions you may have.

Senator DURENBERGER. Our next witness is William MacKenzie, director of corporate safety, 3M Corp. We are delighted to have you with us today. I see you brought your lawyer with you.

TESTIMONY OF WILLIAM MacKENZIE, DIRECTOR, CORPORATE SAFETY, 3M CORP., ACCOMPANIED BY THOMAS SCHEUERMAN, OFFICE OF GENERAL COUNSEL, 3M CORP.

Mr. MACKENZIE. Thank you, Mr. Chairman.

As you have indicated, with me today is Mr. Thomas Scheuerman from our Office of General Counsel. We have submitted a written statement. It is very brief. What I would like to do is just move through it and paraphrase a bit. Then, between the two of us, we would be happy to answer any questions you might have.

3M wishes to thank the subcommittee for inviting us to participate in these hearings. We compliment the subcommittee on the efforts being expended to investigate and to collect facts and opinions regarding the enforcement and administration of Federal and State OSHA plans.

To better understand 3M's credentials to testify on this matter, let me give a brief overview of our company. 3M has over 50,000 employees in the United States and maintains 114 manufacturing facilities in 30 different States. Almost half of the States where our facilities are domiciled have their own OSHA plans. As a consequence, 3M has had experiences with both Federal and State OSHA laws and regulations.

Employee safety and health have long been a major concern to 3M. This concern has resulted in the implementation of many active safety and health programs which involve self-inspections of our workplaces, workplace monitoring, hazard investigations and engineering analysis and training programs. Because of these and related safety programs 3M has developed positive, effective safety and health policies. These policies are exemplified in our lost time accident incidence rate—number of lost time accidents per 100 employees per year. For the first 9 months of 1981 it was 1. This compares to the 1980 Bureau of Labor Statistics figure of 5.7 for all manufacturing facilities. In addition, of the 19 State and Federal OSHA inspection visits to 3M plants thus far in 1981, none have resulted in the issuance of a serious citation. To be sure, some problems have been detected during these inspections but they have not been difficult for us to deal with and, as I've said, none have resulted in a serious citation or the need of our filing a notice of contest.

Thus, while 3M's familiarity with inspections, hearings, and other procedural involvements with Federal and State OSHA agencies is somewhat limited, we can state that we have not experienced any major problems related to the enforcement and administration of either the Federal or the State OSHA laws. In particular, we have attained an excellent working relationship with our own Minnesota OSHA agency which has developed in the spirit of cooperation and understanding. Consequently, 3M's background in this area would tend to encourage the continued movement toward more State participation in the enforcement and administration of safety and health standards.

However, this apparent support is not without its caveat. We have a concern about the potential development of conflicting and inconsistent OSHA regulations where States not only enforce and administer safety and health standards but also promulgate standards and procedures. It is to this issue that I shall direct the remainder of my comments.

Most plan States have adopted and are administering standards virtually identical to those enforced by the Federal OSHA. As a consequence, we have experienced very little inconsistency between the State and the Federal regulations, as well as among the various plan States. This has afforded multi-State employers, such as 3M, the benefit of administering their safety and health compliance programs in a uniform manner. For 3M, it has meant that my staff of 15 people has been able to adequately monitor the various safety and health standards, and to implement a corporate-wide program producing the results I briefly discussed earlier.

However, if each plan State were to commence the adoption of their own, unique OSHA standards, then our task of complying with these multiple laws could increase dramatically and require the addition of many more staff people. This would be necessary not only for the tracking of the regulations but also in order to develop the various programs and controls to insure compliance. For example, if one State was to adopt a labeling standard requiring some product to contain certain information and another State was to have a labeling standard requiring different and conflicting information on the same product, then not only would we have to be aware of these discrepancies but we would also have to be able to resolve the many problems which would arise in attempting to comply with two diverse regulations.

To avoid these and similar types of situations from occurring, 3M requests that the subcommittee consider a procedure whereby the plan States administer and enforce existing Federal standards. This should be done with the proviso of allowing the States to request a deviation from a standard—similar to the current procedures for an employer to obtain a variance—in order to address a particular problem or danger which exists in that State. This would not unnecessarily burden compliance programs of multi-State employers. It would allow each plan State the opportunity to alter standards when, in their judgment, this would be necessary to remedy a particular problem within their jurisdiction.

In summary, 3M acknowledges the increased involvement of States in enforcing and administering safety and health standards. We nevertheless encourage this subcommittee to contemplate the difficulties and problems which may arise through the proliferation of multiple, inconsistent State safety and health standards and procedures.

Thank you for inviting us to participate. We would be happy to answer any questions.

Senator **Durenberger**. Thank you very much.

Let me ask you a couple of general questions first. Have you had more health inspections in the last 4 years than you had previously?

Mr. **MacKenzie**. Yes, the number of health inspections has been increasing with the added emphasis in that area.

Senator **Durenberger**. To what do you attribute the added emphasis?

Mr. **MacKenzie**. I think because of the general concern and the new knowledge which is being developed about the potential health hazards.

Senator **Durenberger**. Do you find that you have, particularly in the last 4 years, more inspections in advance of contract renegotiation time than at other times during the year?

Mr. **MacKenzie**. Not really. I guess that is a possibility. I don't think we have ever attempted to really determine that. There may be, in some cases, some employee complaints issued during negotiations. I can think of one or two cases. However, it is not a general problem for us.

Senator **Durenberger**. In general, do you find the employees' access to the system through the employee complaint process a good or healthy one in terms of industrial relations?

Mr. **MacKenzie**. Yes, I think it is. We encourage our employees to come forth and talk to their supervision and plant manager about any problems that they may have.

Senator **Durenberger**. Do you see it being abused in any fashion?

Mr. **MacKenzie**. No; I don't think so. I am sure that a potential 30 percent of our inspections from OSHA are the result of employee complaints, but I don't see it as an overwhelming problem.

Senator **Durenberger**. Would that be a factor in making judgments about moving the system from the Federal to the State?

Mr. **MacKenzie**. No, I don't think so. I think the ability for employees to raise complaints and to request an investigation is a legitimate procedure.

Senator **Durenberger**. Can I ask you the "internalizing the cost" question that I have been asking various people? I am sure 3M—I couldn't give you the statistics. Maybe you would have as tough a time in your area as in the environmental area of giving all of these statistics. You spend so much on internalizing the societal costs of safety, health and the environment. Is it even practical for us to explore greater internalization of the costs for safety and health inspections and monitoring as we move in the direction which the Assistant Secretary would like us to move? This would be more monitoring, self-auditing, and a variety of other things. Are there some avenues which we have not explored that would secure the system—the consistent financing that it ought to have—so that it isn't just dependent every year on some State legislature saying, "Yes, we will get in; we will get out," or the Congress saying "Yes, we can afford to put more money into the program?"

Mr. **MacKenzie**. I don't think we have given a lot of consideration to, or have any valid opinions about that subject. Tom, do you have any comment?

Mr. **Scheuerman**. I only have one thought about that. We feel that we have, for the most part, been doing most of the things we have been doing now long before OSHA. If there was some way to provide more incentive for those who are willing to carry on a lot of self-policing effort, that would be, I think, supported by us. I don't think I could give a lot of specifics on what they might be, but I think we would sure support that.

Senator **Durenberger**. Let me ask, Bill, about the variance which you mentioned at the end of your testimony. Maybe you could take a real 3M situation and illustrate the particular problem which would exist if we don't take a look at this ability to provide variances.

Mr. **MacKenzie.** You are talking about variances for employers?

Senator **Durenberger.** Yes.

Mr. **MacKenzie.** We have only had one variance request that I am aware of in the history of 3M. It related to a standard governing the storage of flammable materials. Because of the way the standard was written, it would have presented a significant problem to 3M in terms of our cost of warehousing. This was about 5 or 6 years ago. So we petitioned for a variance based on what we thought was solid data and information. OSHA agreed with us and has not only granted the variance, but has since changed the standard to reflect the variance that they granted 3M in that particular case.

So that procedure worked well for us.

Senator **Durenberger.** You are suggesting that there ought to be a variance procedure for States which have, within them——

Mr. **MacKenzie.** Right. We propose here that the standards would be Federal standards administered by the States. However, we are also suggesting that the States should have the ability to request a variance from that standard where they could show that there was a significant need to change the standard in their particular State.

Senator **Durenberger.** Let me explore that just another step further in terms of the role the States could play—if they should play a role—in setting Federal standards in some of these areas. Do you believe it is appropriate for some States that have an expertise with a particular safety or health problem—I am thinking of South Carolina cotton dust as an example—that there ought to be a mechanism by which they could work with the Feds to develop those standards which everyone else could live with after those standards have been adopted?

Mr. **MacKenzie.** I think standards should be based on good technical information, and research and development work which is done to prove the real need for that standard. I think the Federal Government ought to be looking anywhere and everywhere for whatever technical help they can obtain. In the example you cite, it would seem that possibly in the State of South Carolina, there have been studies made or programs are underway which deal with the cotton dust situation, because there is a real problem in South Carolina. We won't have any information on that issue in Minnesota, but South Carolina probably would. I would think that, yes, the Federal Government should very definitely solicit the technical help from whatever area it may be available.

Senator **Durenberger.** I take it you have some problem with the notion that, where you have Federal standards, States would be permitted to adopt stricter standards than a Federal standard?

Mr. **MacKenzie.** They have some ability to do that today. Yes, if the States were encouraged to establish their own standards, we would be concerned about what that would mean to us in terms of our various plants all over the country. As I have indicated, we have plants in 30 different States. We would need to track all of those regulations, to understand how we can meet them. This would be a problem and I question the need for that.

Senator **Durenberger**. But this notion of standard setting which we are discussing now is principally a problem in the health area as opposed to——

Mr. **MacKenzie**. Yes; that is right. There aren't a lot of new ways being developed to hurt yourself. People still get their hands in punch presses, or strain their backs or trip or slip or fall or whatever. The new information coming forth on the hazards to employees are primarily in the health area. So, yes, that certainly is the major area of concern.

Senator **Durenberger**. Thank you very much for your testimony. Thanks for being here today.

Our final witness will be Mr. Jim Lapping, who is representing the Building and Construction Trades Department of the AFL–CIO. Jim, welcome.

TESTIMONY OF JIM E. LAPPING, DIRECTOR OF SAFETY AND HEALTH, BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL–CIO, ACCOMPANIED BY KEVIN FOLLEY, CHIEF, SAFETY AND HEALTH RESEARCH OFFICE, AFL–CIO

Mr. **Lapping**. Thank you, Mr. Chairman, for the invitation to testify on the implementation of OSHA safety and health standards. I am the director of Safety and Health for the Building and Construction Trades Department of the AFL–CIO. With me today is Mr. Kevin Folley, chief of our safety and health research office. My department is composed of 15 national and international unions representing over 4½ million members. Safety and health is a primary concern of the building trades. Twenty percent of all occupational deaths occur in construction, or 2,800 fatalities per year.

State plans are very controversial within organized labor. They are controversial because the implementation and administration of the plans differ in as many ways as there are plans. For example, in Iowa they have compliance officers specifically trained and assigned to do inspections in construction. In California they have a standards setting board with representatives of industry and labor to develop standards. In Oregon and Washington labor-management safety and health committees are required at every place of employment. With 24 State plans, there are numerous combinations of program elements that make each one unique and all of them different than the Federal OSHA program.

How effective is each State plan and how do they compare with the Federal program is a question the building trades have asked every OSHA administrator. We have yet to receive an answer. I can tell you that our members in each State have very strong opinions as to the effectiveness of both the Federal and the State programs, based on firsthand experience. In Virginia there is agreement that the State plan should be withdrawn, returning enforcement to the Federal Government. In California, Michigan, Oregon, and Washington—and many other States—the State building trades councils are very much in support of the State programs.

There is no question that the commitment of the State government to enforcement is the key to acceptance or opposition by our members. While no hard data exists to verify the effectiveness of each program, the experience of our members has provided us with a general understanding of the strengths and weaknesses of State plans.

The preferred situation is for Congress to view American workers as important enough to approve sufficient funding to provide protection for their lives and health. The individuals who are the providers of our Nation's wealth and good lives deserve this protection. Every American worker needs and deserves equal protection against the loss of their health and lives while earning a living for their family and paying taxes to support other social programs of our Nation.

The hazardous conditions that claim the lives of thousands of workers every year and that cause hundreds of thousands of illnesses, including some of the most fatal cancers, exist in every State. Every employer should be required to protect his workers' safety and health, regardless of the type of industry, the size of company, or the size of State where his company is located. This was the goal of OSHA when it was passed in 1970—equal protection for every American worker.

Tragically, this has not been the result of one of the best intentioned acts ever passed by Congress. Nationwide, the lack of minimal protection for Americans at work is emphasized by catastrophe after catastrophe in every industry and in every State. The tremendous loss to our Nation, in both human and economic terms, can only be corrected through a strong and comprehensive national program which is fully supported and funded by Congress.

Before moving on to specific comments on State plans and related programs, I want to again emphasize the building trades department's and AFL-CIO's position that the No. 1 priority is an effective national program which provides complete and equal safety and health protection for every American worker.

Because there is inadequate funding for a national safety and health program, it has been necessary for many States to assume the financial and administrative burden of workers' safety and health enforcement programs. In several States such as California, Michigan, Iowa, and Washington, the State government has performed exceptionally well in carrying out the national program under section 18 of OSHA. Innovative management systems and administrative policies have enabled these States to expand on the national program and have provided an opportunity for experimental projects for eventual national adoption.

Regional offices under the Federal program have also contributed to the improvement of the national program. An example is the outstanding program being developed in Colorado between the State building trades council and the local contractors' association, with the full support and cooperation of the regional administrator, Curtis Foster. This program encourages unions and contractors to work together to promote jobsite safety and health and to reduce the need for constant government involvement. This cooperation allows OSHA to better allocate limited inspection resources.

Some States have chosen to use the lack of safety and health enforcement as an economic incentive to lure hazardous industries into their State. This practice has resulted in unfair competition between States, but even more tragically, the sacrifice of their own peoples' very lives and health.

A comprehensive evaluation system has never existed at OSHA to determine the effectiveness of a State plan in providing protection for workers as mandated by Federal law. Much energy and resources have been expended in the monitoring and reporting on State plan activities without any measurement of the plan's effect on reducing illness and injury to employees. At this point in OSHA's history, there is no data available to either confirm or deny the adequacy of any individual State plan. This is also true for any State where the Federal Government has full responsibility for the protection of employees.

The present system of measuring the impact of both the Federal and the State enforcement results does not focus on the critical elements of the program: reduction and prevention of occupational illnesses and injuries. To measure the effect of a program, the present status of the problem must be clearly identified—the baseline data—with change indicators defined in quantifiable units. At the present time, no standardized system exists at a national level to evaluate the effectiveness of either the Federal or the State programs.

Major differences exists in the structure and operations of each State plan and between OSHA area offices. However, without a system of measurement to determine how experimental projects or administrative policies increase or decrease protection for workers, there can be no building of programs based on the experience of others. Consequently, the national program will continue to be fragmented and controversial.

At the present time there is no evidence indicating a need to amend OSHA. The Secretary of Labor has the authority to require employers to keep records and report injuries and illnesses. Minimal data has been collected and analyzed by OSHA, but no uniform system has been developed for the collection of needed information. Assistant Secretary Auchter has announced his intention to implement a management information system capable of providing additional data on the operations of State plans and the Federal program. We encourage this action; however, we have heard these promises from past administrations.

What we recommend is that the subcommittee request a complete report from OSHA on the present methods used to measure State plans and the Federal program's effectiveness. With the report, they should include a detailed description of what additional information is needed to evaluate the entire program. Without a uniform comprehensive recordkeeping and reporting system in which every State participates, it is not possible to identify where changes should be made or what the results from these changes would be.

I have a supplemental statement from the AFL-CIO which they would like to submit for the record.

Senator DURENBERGER. What position do they take? We will make it part of the record.

[The statement referred to follows:]

STATEMENT OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

It has been the consistent policy of the AFL-CIO that uniform effective protection of the safety and health of American workers can only be attained through a national program of standard setting and enforcement. Indeed it was the very failure of states' efforts to assure protection of workers prior to 1970 that led to the passage of federal health and safety legislation, the Occupational Safety and Health Act of 1970.

The OSHA Act established a uniform federal system for workers' safety and health regulation and enforcement but provided a role for continued state jurisdiction. States which established a plan for standard setting and enforcement which met the criteria set forth in the Act and its implementing regulations could retain jurisdiction for worker health and safety These criteria included among other requirements, the establishment of standards at least as effective as federally promulgated standards as well as adequate funds and personnel for the enforcement of such standards.

Some 24 states and jurisdictions now have section 18(b) plans in various stages of the certification process. But just as there was a mixed history of performance among state programs before the passage of the Act, present performance is similarly mixed. It is because of this variability in performance that the AFL-CIO has had a long standing policy that federal preemption of state programs is necessary to assure uniform protection of this nation's workers. (See attachment).

For the past ten years the AFL-CIO has actively opposed passage of legislation at a state level which would establish inadequate state health and safety programs, challenged insufficient state developmental plans and petitioned for the withdrawal of inadequate state plans.

As long as state plans continue to be responsible for the enforcement of health and safety regulations, however, they must provide the maximum protection possible to workers in those states. In 1978, the AFL-CIO prevailed in a legal challenge to the Secretary of Labor's regulations requiring sufficient staffing and funding for state programs. The court agreed with the AFL-CIO contention that the regulations were inadequate and ordered the U.S. Department of Labor to establish benchmarks for funding and personnel levels to assure that states would develop programs capable of meeting the overall goals of the OSHA Act.

Just as benchmarks are necessary to assure that state programs are adequate, so too is an effective federal monitoring program of state activities. For many years monitoring of state programs was achieved through a system of on-site inspections, spot checks by federal inspectors of state inspections, case file reviews and an evaluation of the state plans' component parts such as standards development, the development of a state management information system (MIS) and laboratory capabilities. Under the present administration, most on-site state monitoring activities have ceased and future monitoring activities will be based in large part on a paper review.

The AFL-CIO is concerned that most on-site monitoring activities of state plans were eliminated without even a trial to determine the effectiveness of the new monitoring system. We believe that the new system may be inconsistent with Section 18(f) of the OSHA which requires both evaluation and inspections by the federal government to determine the effectiveness of state programs. And we have concerns that the new system may not provide adequate information for a valid assessment of state plan performance.

Regardless of the Administration's states' rights philosophy, the Occupational Safety and Health Act imposes a requirement on the Secretary of Labor to withdraw such state authority when a determination has been made that there is a "failure to comply substantially with any provision of the state plan." Thus far, however, this Administration has reversed actions initiated by the previous Administration to withdraw the Indiana and Virginia state plans without any new information indicating that documented deficiencies had been corrected. Moreover, most dual jurisdiction enforcement by the federal government activities in these and other states provided for by the Act have been eliminated, leaving the state as sole enforcement authority.

The federal government cannot abrogate its responsibility to assure the protection of workers in state plan states. Sound monitoring and evaluation systems must be implemented. State plans which afford inadequate protection must be improved or withdrawn. And finally state standard setting and enforcement activities which go beyond the minimal requirements of the federal government should be encouraged and supported by federal funds.

Attachment I—AFL-CIO Convention Resolution (October 1975)

RESOLUTION NO. 124: SAFETY AND OCCUPATIONAL HEALTH
(E.C. Report, Page 212)

It is time the federal government lived up to the promise inherent in the Occupational Safety and Health Act of a safe and healthy workplace for every American worker. There must be no more administrative delays, either for lack of funds or for lack of commitment by the Executive Branch.

The following specific actions must be taken:

1. Congress should sharply increase its financial support to carry out the policy goals it set forth in the law. This would mean a compliance force of 2,500 federal inspectors and industrial hygienists, as an interim goal, by the end of fiscal year 1977. Additionally, there must be increases in manpower for training, statistics and standards development. The National Institute for Occupational Safety and Health must have adequate funds to recruit qualified personnel, expand its scientific research, construct a modern laboratory, more rapidly develop health effects criteria on toxic materials, and conduct manpower training programs to meet the occupational needs of government, industry, unions and the academic community.

2. There should be full federal preemption of promulgation and enforcement of occupational safety and health standards in all states. Programs outside of these two areas should be financed on approval of adequate state plans by a federal grant-in-aid program.

3. Coverage of the act should be extended to all workers, including those employed by state, county and municipal governments.

4. Compliance officers should be permitted to issue on-the-spot orders prohibiting employees from working where there is an imminent danger.

5. NIOSH should be transferred from the Department of Health, Education and Welfare to the Department of Labor.

6. Employee representatives and other employees spending time with an inspector during an inspection should not be required to lose any time or pay.

7. Employees or their representative should be allowed to contest citations on the same grounds as those permitted employers.

8. **Press for the passage of a single mine safety law which would cover all miners currently under the jurisdiction of the Coal Mine Safety Act and the Metallic and Non-metallic Mine Safety Act; transfer responsibility from the Interior Department to a separate safety division in the Department of Labor;** and **give all miners at least the same rights as workers in general industry.**

9. Stimulate more and broader programs of education for workers and management.

The Committee recommends adoption of Resolution No. 124, as amended and I so move.

The recommendation of the Committee was unanimously adopted.

Further, the AFL-CIO:

> **Supports legislation which would transfer responsibility for occupational safety and health of railroad workers under the Federal Railway Safety Act from the Department of Transportation to the Department of Labor.**
>
> **Strongly endorses the Toxic Substances Control Act now awaiting action in the Senate. With the amendments proposed by the AFL-CIO,** workers **would be given added protection from exposure to both** new and existing chemical substances. NIOSH and OSHA would be assisted in identifying and **developing standards with information received from the** Environmental **Protection Agency. Overlapping and jurisdictional conflicts** between EPA **and the Departments of Labor and HEW would be avoided.**
>
> Urges that the labor committees of both the Senate and the House continue their oversight of the implementation of the OSHA Act. We urge that **particularly close scrutiny be given the Occupational Safety and Health** Review Commission.

Finally, we commend the new Secretary of Labor for undertaking an administrative **and policy review of the OSHA program. We sincerely hope** that this **undertaking will result in constructive policy and program changes fully responsive to the goals of the act.**

Senator **Durenberger**. We appreciate your statement and your willingness to testify.

Let me ask you a couple of other questions which you have heard me ask other people this morning. One of them is the so-called political question, about which we might as well be realistic. That is, as administrations change, the consistency, the uniformity and the predictability which you are arguing for in part here clearly have changed. There can be no question about the fact that you are being a crusader of sorts. We would argue with the fact that you only have so many dollars with which to work, or so many people. You put them all on one crusade and ignore the others. You are sending the wrong signals out there into the system. If we argue for greater reliance on the States, we are walking ourselves right into this problem of who is going to pay the bill.

Would you speak briefly to how we can accomplish these national objectives, using a choice of State or Federal implementers, so we can have some uniformity in our system and still find a way to pay the bill for all of it?

Mr. **Lapping**. When you talked about the consumer absorbing the cost—and I believe they do—through the Federal system of paying taxes, they benefit from every construction project, whether it be a high rise building where the employees and the owner of that building pay taxes. It is all part of the public good. We all benefit from the production in our country.

I think the Federal tax system is the way to provide the protection for safety and health. The problem has been that we have continually petitioned the Congress for more funding for the national program. In some cases, where there has not been sufficient funding for the national program, States have found it necessary to come in with State plans to provide the additional protection.

I think our primary concern is in the national program which is effected and funded by the national people. It benefits all the people. Our workers are the greatest resource we have in the country. It is what made our country strong.

Senator **Durenberger**. How do we accomplish that? What we have heard for the last 2 hours is something different than what I alluded to in my statement.

Clearly, in the 3 years I have been here, I can show you all the statistics on my vote rating sheet. On the one side of the issue I am a good guy; on the other side of the issue I am a bad guy. I am a bad guy on a lot more rating sheets when I support OSHA. It only points to the fact that, just the acronym approach to this problem has really gotten us so far away from what we are really up to, it makes it difficult to make good judgments about funding all of these programs.

To the degree that there is some politics in it, it makes the judgments more difficult, too. I applaud the building and construction trades unions and the role which they have played, State by State and nationally, in trying to get the politics out of it and trying to put the best face and a good name on it.

I really don't believe what I heard from your predecessors here today—that there really isn't much of a problem about OSHA. I, frankly, cannot believe that the Wisconsin Senators aren't getting treated the same way I am, that there is very little problem in Wisconsin. Something is going on out there that is giving this program a bad name. To a degree, I think it is this overlapping.

Frankly—and Bruce Swanson didn't bring this out today—but I think one of the problems in Minnesota has been that the Minnesota plan has been a good plan—working with employers to accomplish an objective. In certain administrations there is a Federal person coming from Chicago, looking over their shoulders, critiquing what is going on in the Minnesota workplace and giving the whole system a bad name.

What I see the new Assistant Secretary doing, at least, is trying to sort out his limited resources and putting them to work where they can do the most good. Mr. Auchter is going in the direction of trying to move the certification process, and of clarifying whatever its most effective program is, and some of those sorts of things. He is trying to move the available Federal resources into Federal inspection States and not have them constantly looking over the shoulders of the States. In your opinion, is that a good way to go at it at the present time?

Mr. LAPPING. We have been asking for this approach for the 10 years since OSHA has been implemented. I believe the Assistant Secretary has demonstrated strong recognition of the need to establish some kind of system to hold people accountable. When you are held accountable for an activity and you know what the measurement indicators are, there is not as much criticism because you can tell whether you are measuring up or not. Some of the monitoring systems and procedures in the past have been very nebulous. I can understand why the States are so concerned about not being able to do the best job possible because they still are not meeting some undefined goal.

We need an entirely new system for reporting, both the functions of the Federal and the State programs and the injuries and illnesses, so we can tell if we do need to change the policy. Mr. Auchter says he is making many changes in policies which he claims will improve safety and health. We are concerned about some of them.

We should have implemented some system out there, as a No. 1 priority, 10 years ago. Without it, we can argue forever whether the effect of those changes is good or bad.

Senator DURENBERGER. It sound like you would approve of one direction in which we are going—data collection, trying to find some uniform data base on which to make judgments as to whether or not our policy decisions are effective.

Are there areas in which we seem to be headed that you have some disagreement? What might they be?

Mr. LAPPING. Another thing I am very much impressed with is Mr. Auchter's willingness to ask for advice from his field people with experience; that is, his recent meeting in Colorado Springs. However, I think the targeting program of some proposals, such as the multiemployer worksite situation, needs to be refined.

The concept of the Star program and the Build program is good. They rely heavily on labor-management cooperation, and have existed since unions have existed in construction. That was our goal. However, there needs to be some separate legislation—such as the workers' comp bills—so that employee representatives, unions, and international unions are not subject to third party lawsuits if they become involved in supporting safety and health activities.

These programs give us great concern about our own liability, and they may decrease the involvement of the unions and the workers. However, they are basic to our collective bargaining agreement and we are very much involved in them.

So while we are encouraged by the direction, there are other issues that may be taken very seriously.

Senator **Durenberger.** How about the revised benchmark? Do you have any thoughts or comments on what we are doing there?

Mr. **Lapping.** Mr. Chairman, I think our original position is that OSHA is tremendously underfunded. We need to at least double the number of compliance officers. As I said, just in construction, we have 2,800 fatalities a year. Two people every working hour are killed right here in our own country in construction. For me to say that we would be comfortable in any way, with a reduction in the number of compliance officers, either at the State or the Federal level, would be totally unacceptable to our membership. We need more inspectors. I think the benchmarks, the original ones, may not even be high enough.

Senator **Durenberger.** Any other comments you need to make?

Mr. **Lapping.** No, Mr. Chairman, that is all.

Senator **Durenberger.** Thank you very much for your testimony. We appreciate it very much.

The hearing is now adjourned.

[Whereupon, at 11:40 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

TESTIMONY

TO

THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

U. S. SENATE

ON

THE OCCUPATIONAL SAFETY AND HEALTH ACT

SUBMITTED JOINTLY

BY

WILLIAM LONG, DIRECTOR
MICHIGAN DEPARTMENT OF LABOR

BAILUS WALKER, JR., DIRECTOR
MICHIGAN DEPARTMENT OF PUBLIC HEALTH

Thank you for the opportunity to submit written testimony on the critical area of federal/state relationships encompassed by the Occupational Safety and Health Act of 1970.

I. OVERVIEW OF MICHIGAN'S OCCUPATIONAL SAFETY AND HEALTH PROGRAM

Michigan has had a long history of occupational safety and health programs, predating the passage of the federal occupational safety and health act in 1970. Michigan's occupational health program began with Act 81, Public Acts of 1873, which mandated that the State Board of Health make sanitation investigations to determine effects on health conditions of the public in their places of employment.

Michigan's occupational safety program started in 1909 by legislative action creating Act 285, Public Acts of 1909, which provided for a factory inspection of programs to be conducted by the Department of Labor. Rules and standards pertaining to guarding of equipment, etc., were contained in the statute. Safety inspection of workplaces continued in Michigan under the authority of Act 285 until the Legislature passed Act 282, P.A. 1967, which was the Michigan Occupational Safety Standards Act.

A Bureau of Industrial Hygiene was initially established as a separate operating bureau within the Michigan Department of Public Health in July, 1936. This program function has continued without interruption to this date. Specific rules establishing maximum allowable concentrations of air contaminants in the workplace were promulgated in 1962 under Public Health Department authority established by Act 146, P.A. of 1919. All occupational health standards have been expanded since 1970 to parallel federal health standards.

Act 282 repealed parts of Act 285. It created the Occupational Safety Standards Commission with authority to promulgate standards for occupational safety in all workplaces in the state with the exception of construction, domestic employment and mines. The first occupational safety standard under Act 282 became effective July, 1968. The act, which was administered and enforced by the Department of Labor, also created the Safety Education and Training Division, a non-regulatory element of the state's occupational safety program.

The construction industry was the first specific industry in Michigan which came under legislation which was aimed at the reduction and elimination of injuries and fatalities. This was accomplished through Act 89, P.A. 1963, the Construction Safety Act. That act created the five-member Construction Safety Commission whose members were appointed by the Governor and which had the authority to hire an Executive Director to administer the act and hire inspectors. Michigan's first group of construction safety standards became effective in 1965.

When the Occupational Safety and Health Act (OSHA), P.L. 91-596, passed in 1970, it preempted all state programs that chose not to meet the requirements of OSHA for programs "at least as effective as" the federal program. Michigan was one of many states which, in 1971 when OSHA became effective, had to decide either to develop a state program for occupational safety and health or accept federal control. Michigan decided to continue and improve its program by becoming a party to an 18(h) agreement with OSHA. The agreement was signed on May 17, 1971.

Anxious to meet its objective of having exclusive jurisdiction for safety and health issues, Michigan began the development of a State Plan for occupational safety and health in April, 1971. The plan addressed the safety and health issues which existed at that time while continuing the historic and effective patterns of joint administration between the Michigan Departments of Labor and Public Health. The plan provided a sound demonstration of the ability of those departments to administer a full state program and included commitments to meet the numerous stringent criteria for state programs and the draft language for what was to become the Michigan Occupational Safety and Health Act. After more than two years of effort by the Michigan Departments of Labor and Public Health, the state received approval of the Plan from the U.S. Secretary of Labor in September, 1973. The state had every reason to believe at that time that we would receive our certification of completion of developmental steps of the State Plan within three years of that approval date. That did not occur. Michigan did, however, receive that certification in January, 1981.

After we received initial approval of the State Plan, the Departments of Labor and Public Health presented, to the Governor, the proposed language for new legislation which would provide one statute for the entire state occupational safety and health program. By June of 1974, a very short time for such an important piece of legislation, the Legislature passed and the Governor signed Act 154, P.A. 1974, the Michigan Occupational Safety and Health Act which gave the Department of Public Health the responsibility for occupational health issues and the Department of Labor the responsibility for occupational safety issues. An inter-departmental agreement dating back to 1960, and which is periodically updated, established an effective working relationship between the two departments by providing for interagency referrals and joint enforcement actions as required. The industrial hygienists from the Department of Public Health inspect all workplaces affected by MIOSHA. The Department of Public Health Laboratory performs all necessary analyses for the MIOSHA health program. The Department of Labor's enforcement program is divided into the Construction Safety and the General Industry Safety Divisions. Each of these divisions has a separate staff of safety officers.

Both departments conduct non-regulatory consultive-type programs. Nine staff positions in the Department of Public Health are currently committed to occupational health education, training and on-site consultation. A total of 60 persons in the Department of Labor comprise the Safety Education and Training Division (SET) which carries out a fully developed education and training program for occupational safety, including on-site consultation, providing their services to Michigan employers as well as employees.

The MIOSHA program affects all areas of employment in Michigan except domestic employment and mining. It covers both the private and public sectors. By virtue of the state's Operational Agreement with OSHA, OSHA maintains authority in Michigan to inspect the maritime operations of longshoring, shipbuilding, shipwrecking and ship repairing.

II. FEDERAL/STATE RELATIONSHIP

Michigan has consistently supported the concept of an open, close partnership between Federal OSHA and States having OSHA plans. We should be working together to assure safe and healthful places of employment for all workers. This concept has not always been an easy one to implement. Generally speaking, before the present administration, OSHA at best evidenced an attitude of benign neglect in its limited attempts to obtain input from the states on questions of policy and program administration. Rather, the OSHA administration unilaterally decided all questions of policy and compelled the states to religiously adhere to its dictates, even when the policy decisions directly impacted critical areas of the program administration of the states.

Section 18 of the Occupational Safety and Health Act of 1970 provides for states with approved plans to exercise jurisdiction in the place of a federal OSHA program. It would seem appropriate, indeed advantageous, for OSHA to work in concert with the state as partners in formulating occupational safety and health standards, policies and procedures which address the necessary protection for all workers.

Lack of input by Michigan, and other states, in establishing federal standards and policies which affect all workers either directly through federal enforcement or through state enforcement by federal dictate, has encumbered efforts to coordinate efforts to achieve the goal of a safe and healthy work environment for workers.

Federal OSHA regulations require states to promulgate an "at least as effective as" equivalent standard to a new or more stringent modification of a federal standard. This must be accomplished within six months of the date of federal promulgation. This regulation represents one of the more burdensome requirements placed on states when the Federal/State partnership is not utilized.

Michigan has a unique system for promulgating standards which we believe provides for optimum input from all interested parties in the state.

Rulemaking commissions, created by previous Michigan laws were continued in the MIOSHA, including the General Industry Safety Standards Commission, the Construction Safety Standards Commission, and one newly created commission, the Occupational Health Standards Commission. These three commissions have the exclusive responsibility to promulgate general industry safety, construction safety, and health standards respectively, for the state program. Separating the standards promulgation authority from the individual departments allows Michigan to draw upon experts in the various fields in promulgating new standards. We feel this process has distinct advantages over the federal procedure.

Before a proposed standard, except an emergency standard, may be promulgated, the appropriate commission is mandated by the act to appoint and consult with an advisory committee comprised of representatives of the major employer and employee interests affected by the proposed standard. At least one member of each advisory committee must be a person who devotes a major portion of time to safety or health functions.

The draft of the proposed standard, submitted by the advisory committee, is reviewed and, if acceptable, is given first approval by the commission.

The proposed standard is then scheduled for a public hearing in accordance with Act 306 of 1969, as amended, (Michigan Administrative Procedures Act), which requires that before the adoption of a rule, an agency shall give notice of a public hearing and offer any person an opportunity to present data, views and arguments. The notice is given within the time prescribed by any applicable statute, or if none, then at least 10 days before the public hearing and at least 20 days before the adoption of the rule. By law, notice must be provided in at least three newspapers of general circulation.

In addition, a policy has been established by the Director of the Department of Labor that an announcement of a public hearing for a general industry or construction safety standard must be published in the Department's LABORegister, a free monthly publication, and the public hearing can be no sooner than 30 days after publication. The Department of Public Health also uses the LABORegister to announce public hearings. The LABORegister has a circulation of over 20,000 copies per month.

The notice of public hearing is sent to 1,500 persons, firms, and associations and unions on the general industry standards mailing list and 800 persons, firms, organizations, and unions on the construction mailing list.

All comments offered or submitted in writing at the public hearing are reviewed by the advisory committee and department representatives. Rationale must be provided for the action recommended by the advisory committee for each comment received. The commission then reviews the amended standard and, if acceptable, gives second approval to the proposed standard.

After second approval, the proposed standard is submitted to the Legislative Service Bureau and Attorney General for informal review, then formal certification to assure proper form and legality.

Once the proposed standard is certified by the Legislative Service Bureau and Attorney General's offices, it is submitted to the Joint Committee for Administrative Rules of Michigan's Legislature. When the Joint Committee places the proposed standard on their agenda, the time and date are announced and all interested persons are afforded an opportunity to attend. The Department of Labor also sends a letter to all persons who offered testimony at the public hearing notifying them that the proposed standard has been submitted to the Joint Committee.

The Joint Committee meeting is an open meeting, and any person who wishes to offer comments for or against the proposed standard is offered the opportunity to speak.

If the Joint Committee approves the proposed standard, it is then certified by the Joint Committee and returned to the Department. The Department then submits the proposed standard to the appropriate commission for final adoption.

After final adoption by the appropriate commission, the proposed standard is transmitted to the Governor's Office at least ten days before the rule is filed with the Secretary of State. When the ten-day period has elapsed or when the Governor sends approval, the standard is filed with the Secretary of State and becomes effective 15 days after the date of filing.

In support of the MIOSHA approach is the fact that no MIOSHA standard has been subjected to judicial challenge following its promulgation. This is in contrast to numerous judicial challenges aimed at the OSHA standards.

The MIOSHA also provides that the Directors of Labor and Public Health may promulgate an emergency standard when it is necessary to protect employees.

The promulgation of occupational safety or health standards in the State of Michigan directly places the responsibility upon those parties who have the greatest concern by:

1. appointing safety and health standards commissions consisting of representatives of management, labor, and the public.
2. requiring advisory committee members to be appointed from management, labor, and the public, who are knowledgeable and have experience in the subject matter.
3. holding a public hearing and making a concentrated effort to inform employers and employees within the state.
4. having all public hearing comments reviewed and responded to by the advisory committee and commission.
5. needing legislative approval, which provides for another open hearing for the purpose of offering testimony.

Although federal OSHA is also required to hold hearings and public notices of hearings, it is still federal OSHA personnel who review any comments or testimony, and the Secretary makes the final decision as to the final language of the proposed standard. There is far less representation by the employers and employees who will actually be covered by the standard.

In addition to the requirements mandated by statute for the promulgation of an occupational safety or health standard in the State of Michigan, federal OSHA also requires that an informal comparison of the proposed Michigan standard versus a similar OSHA standard be submitted for review at the time of public hearing. At this time, federal OSHA personnel submit recommended changes to the proposed standard.

When the standard becomes effective, the state must submit a formal comparison for certification of the standard to federal OSHA. If federal OSHA accepts the standard as being "at least as effective as", a notice must be published in the Federal Register.

There is an inequality with this system because when federal OSHA proposes a standard for a subject for which an approved state plan state has already developed a standard, the state can do no more than offer comments. Although the states are partners in administering a national program, we are afforded no more opportunity than that of the general public in federal standards development.

The aforementioned facts indicate that Michigan has a superior process of standards promulgation. The average timeframe is twelve to fifteen months. Clearly by design, Michigan's procedures provide for a better vehicle for public participation via petition for change and direct involvement in the process. Also, our system is superior for purposes of updating standards. Openness in the process is assured. States should not be constrained by an arbitrary six month period for promulgation from the date of federal promulgation.

In order to rectify this injustice, we suggest that all states with approved OSHA plans be included, from the onset, in the federal process for standards promulgation. This will assure that the state partners have an opportunity for direct input into standards, as opposed to the general comments which may be afforded any interested person if a proposal is published in the Federal Register. It will also enable the states to promulgate in conjunction with federal promulgation without being subject to an arbitrary six month deadline from publication in the Federal Register.

Moreover, federal OSHA may and often does, take years to promulgate a standard often without addressing any of the specific needs or concerns of the states. Yet OSHA insists that the states promulgate within the six month limitation. While this is only one example of the "do as I say" not "do as I do" attitude exhibited by OSHA, at least with past administrations, it's a critical one for Michigan.

The same lack of communication between federal OSHA and the partner states is evidenced in the issuance of federal policy directives. Unilateral changes are often made in the interpretation and application of standards or in sections of the federal OSHA Operations Manual without state consultation. These changes may negatively affect specific issues within a state which were not taken into consideration. An example of such an issue would be the MSHA/OSHA jurisdictional agreement and the reversals OSHA has made regarding the requirement to compensate employee representatives for time spent in accompanying OSHA inspectors.

A particular problem exists in Michigan that affects the construction industry when performing a construction operation on a mine site. The federal Mine Safety and Health Act (MSHA) covers all work being conducted on a mine site including construction operations. Although mining is not included within Michigan's occupational safety and health program, MIOSHA does apply to the surface construction operations of contractors performing work on mine sites. This is a typical situation where there are mines located in 18(b) states. The problem has little effect on the state administered program but the construction employer working in this situation is subject to both the state program (MIOSHA) and MSHA.

In addition, it is necessary for Michigan and other states to have an opportunity to assist in formulating the following:

1. Federal regulations covering state plan requirements. Although the livelihood of our program is directly affected by these regulations, we have no opportunity to comment other than that afforded any interested person by publication in the Federal Register.
2. Budget development. We have no opportunity to express our state's specific program needs for appropriations. In these times of economic constraints and hardships, it is critical that we

have direct input into the development of budgetary requests for state plans contained in the OSHA budget.

As a minimum, each state plan state should have an opportunity to provide direct input to federal OSHA on standards and questions of policy and procedure prior to implementation.

It is recommended that federal OSHA establish a task force consisting of federal and state policy-making representatives to review all such issues and provide recommendations prior to implementing final decisions which affect all occupational safety and health programs. In addition, it is recommended that an additional member of the National Advisory Committee for Occupational Safety and Health (NACOSH) be established as a representative of states with OSHA state plans. This would provide Michigan and other states with an opportunity for direct input on the issues being addressed by NACOSH.

Michigan entered into an operational agreement with federal OSHA in January 1977. Operational status, as mentioned previously, is an intermediate step between initial approval of a state plan and a final determination of state status under section 18(e) of OSHA. This agreement, which recognized that Michigan had met the major conditions mandated for a state plan, would enhance the Federal/State partnership; but as explained, it did not. In fact, the state was given assurances that certification of completion of developmental steps would follow shortly after our signing of the operational agreement; yet nearly 4 years passed before certification.

Certification is a necessary step prior to a final determination on Michigan's state plan under section 18(e). Certification is followed by a period of at least one year of intensive monitoring by federal OSHA prior to issuing a determination. A positive 18(e) determination would be a final grant to Michigan of exclusive jurisdiction over those issues identified in our state plan.

Michigan was led to believe, in a letter dated November 12, 1976 from the OSHA Assistant Regional Administrator, that Michigan had successfully completed all developmental steps and that the last phase would be publication in the Federal Register.

Since that time, Michigan has been informed by federal OSHA that failure to promulgate standards within six months of federal promulgation is the main obstacle to certification. As stated in the explanation of Michigan's standards promulgation process, our system is superior to the federal promulgation process and we do not view this issue as a valid concern for withholding final 18(e) determination.

It is recommend that OSHA should be issuing section 18(e) determinations right now on those state plans which have been certified for at least one year. Certainly Congress did not intend that 10 years following passage of OSHA that no decisions would be made concerning the final status of state programs.

Federal OSHA has stated that no determinations will be issued until resolution of the benchmark issue, which will be addressed in greater depth later in this testimony. This means that a decision would be delayed for at least an additional 10 years. It is unconscionable to think that a state, such as Michigan, with an approved plan since September of 1973, would have to wait until possibly 1991 for a determination by OSHA as to jurisdiction over issues of occupational safety and health affecting the workers of that state. This incongruity is made even more obvious when Michigan's superior program performance is contrasted with the track record of federal OSHA.

It is recommended that this Committee send a clear message to federal OSHA that final determinations continue to be processed and that any moratorium be lifted.

While the current administration has revised the benchmark process, there remain serious obstacles to final 18(e) approval unless a clear commitment is forthcoming. In the absence of such a policy, states remain the forgotten partners in the administration of occupational safety and health legislation.

Before offering comments comparing Michigan's program with that administered by OSHA, a few points concerning monitoring are in order. The need for a federal program to monitor the ongoing activities of the state occupational safety and health program is recognized and understood. There are serious questions, however, raised by current and ongoing monitoring activities, after more than five years of such monitoring. This is especially true when consideration is given to the need to maximize field activities and inspections by both state and federal compliance officers and to utilize industrial hygienists to address problems in critical health areas. The state finds that both the state and federal OSHA programs are being criticized when it is necessary to have a federal OSHA monitor monitor another federal OSHA monitor, while they both monitor the state MIOSHA inspector. This has occurred in a number of instances recently. The department also finds it difficult to understand the reasons why it is necessary for OSHA to conduct two additional OSHA accompanied field inspection monitoring visits with each state inspector after OSHA has just completed a similar accompanied visit monitoring effort within the previous two to three months.

Clearly, the state recognizes the importance of maintaining an effective working relationship with the federal program based upon a mutual understanding and respect for the responsibilities of both parties. When unilateral action is taken by the federal OSHA agency representatives which interferes with scheduled inspection efforts of the state agency in responding to employee complaints, serious administrative problems are created. In a recent situation, a federal OSHA compliance officer entered a Michigan establishment to conduct "a non-compliance inspection" which was understood by the employer and the employee representatives to be a consultative visit. The action was taken by OSHA to respond to an employee complaint, knowing in advance that the state had an inspection scheduled for this establishment in response to the employee complaint. In view of the circumstances, the state was forced to delay the inspection and to respond to questions from the employer as to the reasons for a duplication of efforts. The situation reflects poorly on both the state and federal agencies.

III. FEDERAL/STATE COMPARISON

The next major area to be addressed is the comparison of federal and state programs in general, and a specific comparison of the MIOSHA and OSHA programs.

Recently, our Statistical Information Division compiled a study which compared the OSHA programs of the six states in our region. It is interesting to note that in our region, Region V, three states operate their own 18(b) plans while the other three are under federal jurisdiction. This mix of programs lends some weight to the significance of the various similarities and differences uncovered.

Included in the appendix to this testimony are two tables from the analysis comparing Michigan with the other states in our Region and with the total federal program. In addition, a graphic illustration is included depicting the decrease in Michigan's injury and illness incidence rate compared with certain other states. Also, a table is included which shows Michigan's experience in reducing program-related fatalities.

The comparison of programs is this region reveals several interesting facts. State programs tend to perform more inspections relative to the size of the state than federal programs. The state programs place more emphasis on general scheduled inspections as compared to the federal emphasis on complaints, even though every valid complaint received in Michigan is investigated.

Another factor which is evident from our statistical analysis is that the state plans place higher priority on construction inspections than is seen with federal inspections. This is very important because the construction industry is known to be very hazardous and, historically, has had a high number of occupational injuries. It is true that OSHA recognizes the dangers which construction activities pose, but even with their emphasis program for construction sites, the federal impact at construction projects is less than the state plan states.

The difference in the number of violations cited is also startling. State OSHA programs issue more violations than their federal counterparts, but they tend to issue a larger percentage of other than serious violations. In the 1979-80 fiscal year, Michigan issued citations for a total of 66,179 violations; a number 2.4 times as large as the total issued in all three states in Region V under federal jurisdiction. However, of these violations, only 4,128 or six percent, were classified as serious; while in all federal OSHA states, 37 percent of all violations were given a serious classification. It should be noted, however, that the total number of serious violations issued by Michigan in FY '79 was greater than the number of serious violations issued by OSHA in any of the three states in Region V where OSHA has jurisdiction.

These differences in inspection and classification activities are also reflected by the difference in penalties assessed. In 1979-80, the MIOSHA program assessed three quarters of one million dollars for safety and health violations; whereas Ohio, a federal OSHA state of similar size with about seven times fewer violations, assessed over two million dollars in penalties.

The following are comments on the inspection and penalty philosophy in Michigan which differs from that accepted by federal OSHA administrators. It has been found that with increased coverage and effective follow-up procedures that large fines are not necessary for compliance of discovered violations or to expand the "ripple effect" and induce voluntary compliance. Michigan business people know the MIOSHA program and what the program is trying to accomplish, and for the most part cooperate with us to reach the goal of worker safety, a fact substantiated by our low percentage of contested cases.

When Michigan data is compared to the combined figures for the entire federal programs, which includes 29 states and the District of Columbia, there are some interesting results. During the 1979-80 fiscal year, Michigan completed 26,148 inspection as compared to 66,066 in federal OSHA states. This means that the MIOSHA program completed 40% of the total output of the entire federal program. This statistic takes on added significance when one realizes that federal OSHA has about 18 times as many compliance officers as Michigan, and involves a total employment of about 55 million workers as compared to 3.6 million in Michigan. In addition, it is interesting to note that the combined efforts of Michigan and California (another state plan state) in conducting inspections and investigations for FY 1978-79 totaling 40,013, represents 69% of the total of 57,937 inspections and investigations conducted by federal OSHA.

One important result of Michigan's greater number of inspections is that approximately 20 percent of Michigan's workforce is affected annually and thereby comes into contact with the MIOSHA program, while the federal program affects about 7 percent of its covered employees. Last fiscal year, over

700,000 Michigan employees were affected by MIOSHA enforcement activities, and yet thirty federal OSHA programs affected only 3.9 million employees. This exposure in Michigan is desirable since it produces the ripple effect that increases health and safety awareness. This additional coverage, coupled with a priority targeting system is one of the most efficient methods of providing worker safety; a judgment that is confirmed by the continual decline in injury rates and program related fatalities in Michigan (See Exhibits 3 and 4).

Finally, while government regulatory programs are often criticized for not applying the same standards of performance to governmental agencies that are required of the private sector, in Michigan this is not the case. MIOSHA provides the same protection and services for over 500,000 public employees as are applicable in the private sector. Public employer inspections are an important part of our MIOSHA program; an element that would be left without coverage if the federal OSHA law applied in Michigan.

IV. SAFETY EDUCATION AND TRAINING

Another aspect of the Michigan program is its efforts in health and safety education and training. The overall goal of Michigan's educatior and training program is to eliminate safety hazards and reduce job injuries and illnesses through consultation and training of employers and employees in the areas of accident prevention and safety standards. High accident frequency firms are given priority for these services, but all employers and employees seeking assistance are aided through the consultative, training and informational activities of the program.

The Safety Education and Training Division (SET) was established in the Michigan Department of Labor in 1967 through provisions of Public Act 282. Prior to 1967, concerned leaders in industry, labor, and business had noted alarming losses in human resources because of job accidents. Through their combined efforts, the SET program was created. As evidence of this concern for safety education and training, the program receives part of its funds from a special SET levy which is assessed on workers' disability compensation insurance carriers based upon total annual workers' disability compensation benefits paid in Michigan.

Available data at that time indicated that almost 1/4 of Michigan's manufacturing establishments were in the "high accident frequency" category and that the vast majority of these poor safety records were being compiled by small-to-medium size firms. To assist in alleviating these conditions, the SET program was designed to offer free professional safety services to employers with safety problems.

The primary program available to employers through SET is the Safety Director Program. Prospects for the Safety Director Program are obtained from a list of high accident frequency firms, or through referrals from Safety Officers, or through the individual employer's request for services. This program identifies, analyzes and corrects job safety problems through comprehensive training tailored to specific employer operations. From this material, a detailed safety proposal is prepared for the employer outlining safety problems and methods to be used to correct them.

Training of personnel is usually conducted over a period of several months. Once the Safety Director Program is completed, the employer will continue to receive consultative or training assistance, as needed, on a continuing basis. Annual audits of the firm's injury records are conducted for three years following completion of an ADP and additional assistance is given if needed. Last year, in Michigan, about 180 SPDs were conducted.

The Department conducted an analysis in 1977 of the effect of the SPD program on employer injury and incidence rates. This analysis of a sample group consisting of 124 SDP recipients showed a reduction in the injury incidence rates for the sample group of 38%.

A SET Grant Program was initiated last year to encourage private groups such as employers, unions, and learning institutions to develop new approaches to promote safety training for hazardous industries and small employers and have awarded nine such grants to date. This addition to SET will prove to be a positive contribution to our total education and training approach.

Other SET activities include:

- Consultative Contacts. The SET Division makes over 3,000 consultative contacts each year. Consultative contacts include safety surveys of establishments to identify hazards and to give general safety advice and assistance.
- Seminars and Workshops. About 1,000 seminars, workshops and special programs are one-day sessions and would cover such areas as accident investigation, recordkeeping, hazard recognition, job safety analysis, safety standards, employer and employee responsibilities and are usually aimed at either employers, union employees, or supervisors.
- Slide Presentations. Over 40 different colorslide programs explain ing Michigan safety standards are available for presentation by consultants at an employer's site. About 1,200 are presented each year.
- Safety Administrator Courses. About 15 safety administrator courses are conducted annually. These three-day courses are aimed at people who have only recently assumed responsibilities for safety in their organizations or for experienced safety people who want a refresher course in various safety areas.

- Safety Training Sessions. About 700 safety training sessions are conducted annually for construction trades and industrial apprentices.
- Safety Literature. About 500,000 pieces of safety literature, and posters have been developed and distributed to employers and employees each year.

It should also be noted that Michigan's SET program is directed to the needs of workers. The total education and training appropriation is divided 40% to employers, 40% to employees, and 20% discretionary funds. Recent findings indicated that about 48% of our program efforts are directed to safety education and training activities for employee organizations.

In June of 1981, the SET Division added an on-site safety consultation program. The on-site consultation program does not replace any past consultative activities, but is an additional service, conducted following federal OSHA on-site consultation guidelines. While present safety surveys are aimed at identifying hazards, the new program does, in addition, list standards violations and set abatement targets. This program will respond to requests from employers, particularly small employers with limited resources available for acquiring internal safety personnel, for on-site consultation concerning problems associated with understanding, applying and complying with specific safety standards. This addition will result in the most comprehensive range of safety and health consultative services available under any program.

The Department of Public Health also maintains an occupational health training education and information program along with an on-site consultative program. The purpose of this important activity is to promote programs to minimize or eliminate occupational disease and to function in a productive and supportive manner to facilitate the accomplishment of the total program objectives. The specific objectives are as follows:

1. To maintain an informed and trained staff of industrial hygienists who are capable of carrying out program responsibilities in an effective and professional manner.
2. To inform employers and employees of their duties, responsibilities and rights under the MIOSHA and of the means of compliance with occupational health standards.
3. To inform and to provide specialized training for employers and employees in the recognition and control of health hazards in places of employment.
4. To develop and distribute educational materials pertaining to occupational health hazards and standards.

The Department of Public Health's consultative program objective is to provide assistance to employers in both the public and private sectors in the recognition, evaluation and control of all occupational health hazards, to assist employers in the improvement of working conditions to the benefit of the employees and to promote voluntary compliance with occupational health and safety standards.

The state occupational health consultation program includes the following:

1. On-site consultative services relating to occupational health for employers requesting such services.
2. Promotion of voluntary compliance with occupational health standards by means of consultative services.
3. Narrative reports to all employers or employees requesting consultative services of Department findings, conclusions and recommendations for the improvement of working conditions and to promote voluntary compliance.

4. Special investigations as required to develop information relative to newly identified health hazards for which no standard exists as a means of alerting employers of such hazards and to determine the need for Department action in the area of standards and enforcement.

V. SPECIFIC ISSUES

Finally, three major areas of concern in occupational safety and health today must be addressed; priority inspection program, responses to employee complaints, and the benchmark issue.

a. Priority Inspections and Investigations

Prior to the enactment of MIOSHA, Michigan had priority programs for its safety inspection activities. The programs have been under continued review and revision in an effort to direct our inspection activities to those industries, specific establishments, or employer size establishments experiencing an injury rate which warrants directing our limited resources for the purpose of inspection.

In developing priority programs, Michigan has taken into consideration the personnel resources available so that the priority activities can be completed within a reasonable time frame. By doing so, it was possible to revise the program as dictated by a change in inspection staff resources or a change in an industry injury experience.

Another significant factor in the Michigan priority program is that it does not rely solely on an industry accident experience, but also includes an individual establishment's injury experience in determining those firms or industries which will fall within a priority program. Recently a program of classifying injuries reported by an employer as a program or non-program related injury was started. This will enhance the priority program development to the extent that it will be able to select establishments having a high injury rate based on program related injuries and even to the extent of determining if these are safety or health related.

In the past, efforts were keyed to four major industry groups, specifically, primary metal industries, those that fabricate metal parts, businesses that build machinery and the transportation industry. Since the entire state economy is closely tied to the production of durable goods in the auto industry, this system naturally directed our efforts to the high hazard industries.

Nevertheless, new information and restrictions of activities have dictated that the priority inspection system be refined. A priority system which targets specific establishments on the basis of their individual past history as well as the overall hazardous potential of the industry they are in will soon be implemented. With this design, inspection of all establishments in the state, which are ranked as the most hazardous every year, is contemplated. This will include such operations as nonferrous foundries, stamping plants, slaughterhouses, sawmills, plastic manufacturers and other higher than average hazardous workplaces.

OSHA recently implemented an inspection scheduling system. While we are in the process of preparing a formal response to the program, attached is a copy of our initial comments that were provided to federal OSHA. A copy of the final formal response will be forwarded to this committee.

Perhaps the OSHA approach to developing its scheduling system demonstrates that states, even under the new expressions of willingness by OSHA, remain as spectators in policy formulation. Many states did not receive, or received late in September, copies of the federal proposal. In Michigan, we received a copy for comment approximately September 7th. Our comments were due on the 18th. Federal OSHA implemented its complex system, which includes printed forms for use by compliance officers, on October 1, 1981. Clearly, there was no serious intention to consider state input.

b. Complaints

In Michigan, about 93 employee safety complaints and 80 health related complaints are received each month. These safety complaints have been investigated within a reasonable response time with about 80% being investigated within less than ten days from the date of receipt. Current data on the complaint response time of federal OSHA is not available. However, an earlier evaluation report by OSHA on the Michigan program indicated an average response time of about 15 days.

A backlog of complaints has not developed in Michigan as has been experiences by the U.S. Department of Labor. This resulted in their issuance of a new program directive for processing complaints in an effort to control their growing backlog. Michigan's safety and health enforcement programs have not adopted the federal directive. All valid safety and health complaints are investigated in Michigan.

c. Benchmarks

The final area to be addressed is one that is of the utmost importance to the federal, and especially the state, OSHA programs. This issue was raised in the case of AFL-CIO v. Marshall.

The development of this case was followed in Michigan with concern since its beginning. Michigan has consistently supported the concept of establishing reasonable levels of enforcement personnel for the state and federal programs. Many times assistance and experience in preparing a response to the court's order has been offered and, while it is true that OSHA has included Michigan in some of their discussions, it has been on a rather limited basis. This partial participation was unacceptable to this state and, as a result, Michigan has filed an Amicus Curiae Brief with the District Court which details our suggestions. The following will reiterate our position on a few of the primary issues.

The most serious objection is that the OSHA report to the court includes a benchmark formula for the minimum number of compliance officers necessary in each state which is based extensively on federal averages and data produced by federal "expert" workgroups. State specific data must be the basis for benchmark determinations.

Even though OSHA administrators themselves agree and state in the report that the federal numbers may be revised, OSHA labels the federal figures as "THE BENCHMARK" in the report and fails to detail the tentative nature of the numbers.

A prime example of why the federal benchmarks should have been more clearly described as estimates, is their inclusion of time estimates for public sector inspections. The federal experts estimated that approximately two percent of the time spent on private sector inspections should be allocated for the public sector. However, as you know, federal OSHA does not have jurisdiction over public sector employees; only state plans cover them. Therefore, it would be logical to let the states, themselves, that have actual experience with the public sector, determine how much time is needed based upon experience rather than estimates.

Along with this is the fact that the federal report includes no detailed description of the actual modification process. If the benchmarks are subject to change, then why is there no formal mechanism presented for this process? Even if no system has been developed as of now, why weren't examples of possible adjustments of the benchmark with state data presented to the court? I believe that Michigan was not alone in providing the USDOL with examples of actual benchmark numbers which were computed with state figures.

A second concern with the benchmark submission is that it contains no guarantee that federal OSHA programs must be held accountable to the same staffing criteria used for the states. The cover letter of the report does state that "OSHA is committed to making every effort to reach a parallel level of personnel", but such an intent could easily be circumvented, leaving a system that provides reduced levels of worker coverage in areas of the country covered by federal OSHA.

Another disconcerting section of the benchmark report pertains to funding for "adequate voluntary compliance services", but gives no explanation of what is considered adequate. I feel we, in Michigan have made great strides toward increased worker safety by emphasizing voluntary education and training as well as enforcement.

At the present time, there is more than one safety education and training consultant for every two enforcement officers in Michigan, while the national average is one consultant for every four enforcement personnel. States should be assured that no tradeoff of consultants for compliance officers would be mandated just because federal OSHA has a smaller percentage of consultants.

While federal OSHA has recently amended the benchmark levels, they remain a problem for the states. Budgetary constraints have yet to be fully recognized in the process. Clearly the new benchmarks and the process are an improvement from those of the previous administration. Michigan's formal response is being prepared and will be forwarded to this committee for the record when it is submitted to OSHA.

VI. CONCLUSION

In closing, the commitment to continually seek improvements in the Michigan program must be emphasized. As already demonstrated, Michigan is taking steps to improve program administration and services. In addition, the Michigan Legislature enacted, in 1979, a number of amendments to MIOSHA aimed at:

1. Enhancing worker participation generally and specifically in the citation appeals process;
2. Clarifying issues such as pay for worker participation in inspections;
3. Providing for more efficient administration of the discrimination provisions;
4. Enhancing the participation by employees and small businesses in standards development by providing compensation for serving on standards advisory committees;
5. Providing access for workers to health surveys and medical records; and,
6. Requiring material safety data sheets for certain processes.

While these are merely a summary of some of the revisions, when coupled with the existing provisions of MIOSHA, the amendments have provided both private and public Michigan employers and workers with one of the most comprehensive and fair occupational safety and health laws in the nation.

Federal OSHA recently convened in Washington a series of Effectiveness Task Force Groups aimed at revising the current system for monitoring state programs and measuring program effectiveness. These groups included both federal OSHA personnel and representatives from state program states. We view this process as a positive step toward including states as full partners in the total occupational safety and health effort. We urge cooperative efforts such as this to continue and be expanded to other policy areas in the future. In addition, we are hopeful that the proposals generated by the task groups will be seriously considered by OSHA and a system mutually beneficial to both federal and state program performance evaluation will be implemented.

Finally, recognizing certain areas of disagreement as previously mentioned, the overall relationship with federal OSHA administrators is good and continually improving. We are both working toward the same goal, the safety of America's working men and women on the job. It is this goal that unites us even above any differences.

Hopefully, the recent improvements in state participation is a sign that OSHA is beginning to recognize the contribution to worker safety and health that is and can be made by the states.

To be successful, the federal administration must accept state programs as partners in the same venture, rather than compete one against another. Only in this way will fully effective safety and health programs become a reality.

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EXHIBIT 1

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TABLE 1. OSH PROGRAM STATISTICS, REGION V STATES, FY '79-'80

Category	18-b States 1/			Federal OSHA 2/		
	Michigan	Indiana	Minnesota	Ohio	Wisconsin	Illinois
Total Inspections	26,148	4,916	4,541	5,239	2,829	5,595
Safety	24,421	4,881	4,312	4,121	2,224	4,390
Health	1,727	35	229	1,118	605	1,205
Accident	1,538	76	88	169	83	159
Complaint	1,684	178	423	1,628	727	1,168
Scheduled	21,294	3,471	3,646	2,710	1,551	3,459
Follow-up	1,632	1,191	384	732	468	809
Contested 4/	456	197	178	609	318	572
In Compliance 5/	10,925	743	2,154	866	441	951
Total Violations 6/	66,179	11,917	9,382	9,823	5,796	11,833
Serious 7/	4,128	4,526	1,663	NA	NA	NA
Non-Serious 8/	62,051	7,391	7,719	NA	NA	NA
Other Violations 9/	514	239	254	NA	NA	NA
Violations per inspection	2.5	2.4	2.1	1.9	2.0	2.1
Citable hazards per 100 employees affected	10	6	5	7	7	8
Total Penalties 6/ Proposed ($)	750,965	839,050	260,458	2,070,384	1,093,740	2,948,172
Serious ($) 7/	665,600	831,980	231,052	NA	NA	NA
Non-Serious ($) 8/	85,365	7,070	29,406	NA	NA	NA
Other Violations ($) 9/	167,395	210,435	41,317	NA	NA	NA
Average penalty per violation ($)	11.35	70.41	27.76	210.77	188.71	249.15
Average penalty per serious violation ($)	161.24	183.82	138.94	NA	NA	NA
Average penalty per non-serious violation ($)	1.38	.96	3.81	NA	NA	NA
Average penalty per other violation ($)	325.67	880.48	162.67	NA	NA	NA
Average penalty per inspection ($)	28.72	170.68	57.36	395.19	386.62	526.93
Program Coverage						
Annual Average Employment (000's) 10/	3,628	2,260	1,771	4,495	1,965	4,859
Employees Affected	708,128	332,865	318,148	243,669	151,820	347,540
Employees Affected per inspection	27.1	67.7	70.1	46.5	53.7	62.1
Compliance Staff	93	73	82	89	57	90
Inspections per inspector 11/						
Safety	103	20	27	19	15	22
Health	14	1	4	8	8	8
Average Inspection Time(hrs)	5	14	8	NA	NA	NA
Safety	NA	NA	NA	13	15	14
Health	NA	NA	NA	35	44	36

See footnotes after Table 3

EXHIBIT 2
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TABLE 2. OSH PROGRAM STATISTICS, MICHIGAN AND FEDERAL OSHA, FY '79-'80

Category	Michigan [1]		Federal OSHA [3]	
	Number	Percent	Number	Percent
Total Inspections	26,148	100.0	66,066	100.0
Safety	24,421	93.4	53,903	81.6
Health	1,727	6.6	12,163	18.4
Accident	1,538	5.9	2,586	3.9
Complaint	1,684	6.4	16,715	25.3
Scheduled	21,294	81.4	34,352	52.0
Follow-up	1,632	6.2	12,413	18.8
Contested [4]	456	1.7	7,471	11.3
In Compliance [5]	10,925	44.6	19,351	36.1
Total Violations [6]	66,179	100.0	137,034	100.0
Serious [7]	4,128	6.2	50,683	37.0
Non-Serious [8]	62,051	93.8	86,351	63.0
Other Violations [9]	514	-	5,355	-
Violations per inspection	2.5	-	2.1	-
Citable hazards per 100 employees affected	10	-	10	-
Total Penalties Proposed ($) [6]	750,965	100.0	23,525,318	100.0
Serious ($) [7]	665,600	88.6	23,331,015	99.2
Non-Serious ($) [8]	85,365	11.4	194,303	0.8
Other Violations ($) [9]	167,395	22.3	9,783,115	41.6
Average penalty per violation ($)	11.35	-	171.68	-
Average penalty per serious violation ($)	161.24	-	460.33	-
Average penalty per non-serious violation ($)	1.38	-	2.25	-
Average penalty per other violation ($)	325.67	-	1,826.91	-
Average penalty per inspection ($)	28.72	-	356.09	-
Program Coverage				
Annual Average Employment (000's) [10]	3,628	100.0	55,542	100.0
Employees Affected	708,128	19.5	3,906,488	7.0
Employees Affected per inspection	27.1	-	59.1	-
Compliance Staff	93	-	NA	-
Inspections per Inspector [11]				
Safety	103	-	15	-
Health	14	-	5	-
Average Inspection Time (Hrs)	5	-	20	-

See Footnotes after Table 3

EXHIBIT 3
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TABLE 5. STANDARDIZED OCCUPATIONAL INJURY AND ILLNESS RATES, BY STATE, 1978

Rank	State	Standardized Incidence Rate 1/	18(b) State	Federal OSHA
1	Delaware	6.3		X
2	S. Carolina	6.6	X	
3	N. Carolina	6.8	X	
4	Michigan	7.9	X	
5	W. Virginia	8.4		X
6	Kansas	8.5		X
6	Maryland	8.5	X	
8	Indiana	8.6	X	
8	Virginia	8.6	X	
10	Rhode Island	8.7		X
11	Connecticut	8.8		X
11	Louisiana	8.8		X
13	Alabama	8.9		X
13	Kentucky	8.9	X	
13	Massachusetts	8.9		X
16	Missouri	9.0		X
17	Pennsylvania	9.1		X
18	Arkansas	9.2		X
18	Vermont	9.2	X	
20	Minnesota	9.3	X	
21	New Mexico	9.4	X	
22	Wyoming	9.8	X	
23	Iowa	9.9	X	
24	S. Dakota	10.0		X
25	Nebraska	10.2		X
26	Florida	10.5		X
26	Wisconsin	10.5		X
28	California	10.7	X	
28	Maine	10.7		X
30	Idaho	11.0		X
31	Utah	11.2	X	
32	Alaska	11.4	X	
33	Montana	11.5		X
34	Washington	11.6	X	
35	Arizona	11.8	X	
36	Hawaii	12.6	X	
37	Oregon	13.8	X	
38	Nevada	14.5	X	

Footnote: 1/ All rates have been adjusted to reflect an industry mix equivalent to that in the U.S. as a whole. The rates represent the total number of recordable injuries and illnesses per 100 full-time employees.

Source: Michigan Department of Labor, Statistical Information Division from data provided by the Bureau of Labor Statistics, U.S. Department of Labor.

EXHIBIT 4

"FATAL FIGURES"

CATEGORIES (SIC) OCCUPATIONAL FATALITIES* IN MICHIGAN

CATEGORIES (SIC)		TOTAL FOR 1981 thru Aug.	Total For 1980	Total For 1979	Total For 1978
Agriculture	(01-09)		2	2	4
Oil & Gas Well Drilling	(13)		3	2	1
Construction	(15-17)	2	23	26	37
Manufacturing	(20-39)	3	24	32	46
Transportation & Utilities	(40-49)	1	4	6	7
Wholesale Trade	(50-51)		2	4	5
Retail Trade	(52-59)		5	4	5
Finance, Insurance & Real Estate	(60-67)			1	1
Services	(70-89)		7	6	4
Public Administration	(90-97)		3	7	2
TOTALS		6	73	90	112

*These figures do not include fatalities resulting from heart attacks, murders, suicides, highway motor vehicle and aircraft accidents.